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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. Supreme Court

Knox R. McMahon, Circuit Court Judge

Case Nos. 2010-GS-32-2318, -1440, & -1444

State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Appellant.

**RECORD ON APPEAL
VOLUME III**

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1 you're going to hear from the Defense insofar as their
2 case in chief.

3 The State would have the opportunity at this point
4 to present any evidence and testimony it chooses to
5 do in reply.

6 So we would now turn our attention to the Solicitor
7 and ask, Solicitor, does the State intend to offer any
8 evidence or testimony in reply?

9 SOLICITOR: Yes, Your Honor.

10 THE COURT: All right. Reply testimony, ladies and
11 gentlemen, is testimony that would focus on any new matter
12 that was brought up during the course of the Defendant's
13 case.

14 That being said, Solicitor, you may call your
15 first witness in reply.

16 SOLICITOR: Thank you, Your Honor. The State calls
17 Daniel Cameron.

18 THE COURT: All right, Mr. Cameron, if you'd come
19 around and be sworn, please.

20 DANIEL CAMERON, being duly sworn,
21 testified as follows:

22 CLERK: Please have a seat and state your full name
23 for the record.

24 WITNESS: Daniel Allen Cameron, and the last name is
25 C A M E R O N.

1 CLERK: Allen is A L L E N.

2 WITNESS: A L L E N. Yes, maam.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Mr. Cameron, good morning.

6 A. Morning, sir.

7 Q. You really don't want to be here today, do you?

8 A. No, I don't. Not at all.

9 Q. Do you know Andrew Torrence?

10 A. Yes, sir. I've known Andrew for about fifteen
11 years.

12 Q. And how would you describe your relationship with
13 him?

14 A. He's a really good friend of mine, one of my --
15 probably one of my best friends over everybody over the
16 years.

17 I've known Drew since high school on up until now.

18 Q. Okay. Back in October or thereabouts of 2008, did
19 you have the opportunity to speak with Andrew about the
20 occurrence at Shaggy's . . .

21 A. I did.

22 Q. . . on September 28th?

23 A. Yes, sir.

24 Q. And in that regard, did Mr. Torrence make any state-
25 ments to you concerning anything about the shooting?

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MR. CAMERON ON DIRECT

1 A. Yes, sir. He told me his version of what happened,
2 basically what happened that night.

3 Q. Did he tell you anything about what happened after
4 the shooting occurred?

5 A. He told me about when the police came and all that,
6 after what's in question. He told me that afterwards he
7 was trying to help Zach and took his shirt off and tried
8 to help, you know.

9 Q. Okay.

10 A. I'm getting ahead of myself.

11 Q. I just want to make sure I understand. You are say-
12 ing that Mr. Torrence told you that after he shot Zach
13 he took his shirt off and attempted to help him?

14 A. Yeah, that's what I got. I mean, I can't remember
15 quotes and everything.

16 Q. I'm not asking you to remember quotes.

17 A. That was not . .

18 Q. But in your conversation with Mr. Torrence, . .

19 A. Yeah, that's what I came away with, that after every-
20 thing happened he tried to help him. I know he tried to
21 -- when he cops showed up, he immediately said, hey, I'm
22 here, you know, and was actually trying to expedite the
23 process, to help him out.

24 The impression I got was that he took his shirt off
25 and was trying to, you know, stop the bleeding and

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1 everything.

2 Which I assumed was, you know, kind of like a life-
3 saving course thing that he'd had before or something.

4 Q. That's all I have. Please answer any questions Mr.
5 Floyd may have for you.

6 THE COURT: Thank you. Thank you, Solicitor.

7 Mr. Floyd?

8 CROSS EXAMINATION

9 BY MR. FLOYD:

10 Q. Mr. Cameron, . .

11 A. Yes, sir.

12 Q. . . did Drew tell you why he went back in the bar?

13 A. Originally?

14 Q. Yes.

15 A. Yes, sir, he said he wanted the police out there.

16 He wanted to make sure they didn't leave until the cops
17 got out there.

18 Q. He didn't say he went back in the bar to detain them?

19 A. Yes, sir.

20 Q. And did you look at the videotape?

21 A. Yes, sir. I had the chance to see it.

22 Q. And did what he say to you about what happened that
23 night -- did that coincide with what you saw on the video?

24 A. Oh, yes, sir. Exactly.

25 SOLICITOR: Objection, Your Honor. That calls for

MR. CAMERON ON CROSS

1 speculation.

2 THE COURT: Overruled.

3 BY MR. FLOYD:

4 Q. And so you knew he was working as a security officer?

5 A. Oh, yes, sir.

6 Q. And did -- after viewing the videotape, did it ap-
7 pear to you that he was acting in self-defense?

8 A. Yeah, it looked like he was trying to, like, take
9 the gun away from him.

10 Q. And are you taught as a security guard if someone
11 tries to take . .

12 REPORTER: I'm sorry. I didn't understand you.

13 Q. Are you taught in the security field that if some-
14 one tries to take your weapon . .

15 SOLICITOR: Objection, Your Honor.

16 THE COURT: Yes, sir, overruled.

17 (End of question not audible due to Solicitor speak-
18 ing at the same time)

19 A. Yes, sir. That's why when we're out on the range,
20 you know, we do kind of what's called a rock back. It's
21 for where people are trying to take your gun, you actually
22 put your hand in front of your face and kind of rock back
23 which simulates somebody trying to get your gun.

24 Q. And is that what you saw Mr. Torrence performing on
25 the video?

1 A. To be honest with you, I don't remember a lot of the
2 tape. I was trying to -- I really -- to be honest with
3 you I really didn't want to see it.

4 And so, you know, everything -- I walked away with
5 the video impression after viewing it that, you know, the
6 gun was about to be taken from him.

7 Q. Thank you.

8 MR. FLOYD: Your Honor, no further questions.

9 THE COURT: Redirect, Solicitor.

10 SOLICITOR: Yes, sir, Your Honor.

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Mr. Cameron, do you recall Mr. Torrence telling you
14 there was a struggle over the handgun?

15 A. Well, yeah. The -- he was coming to get it, and
16 they were, you know -- like, he had to take evasive action
17 and, like, move, you know.

18 It was like a struggle to keep that from happening.
19 Like, if he would have stuck in his present course, you
20 know, just standing there, he wouldn't have that gun.

21 Q. And did he also tell you how the gun went off?

22 A. No, we never got into the, you know -- you can see
23 the gun being fired, so, I mean, I never got into the
24 mechanics behind that or anything really.

25 You know, I really didn't -- just because I've

MR. CAMERON ON REDIRECT

1 ended up in the position I'm in right now, I didn't want
2 to really get a lot of information on what was happening,
3 to be honest with you.

4 Basically I didn't want to end up testifying for
5 anybody.

6 Q. That's all I have. Thank you.

7 THE COURT: Recross?

8 MR. FLOYD: No, sir, no further questions.

9 THE COURT: Thank you, sir. You can step down.

10 WITNESS: Thank you.

11 (Witness excused from stand)

12 THE COURT: Solicitor, you may call your next wit-
13 ness.

14 SOLICITOR: The State calls Mr. Ken Robison.

15 THE COURT: All right, Mr. Robison, if you would come
16 around, please, and be sworn.

17 KENNETH ROBINSON, being duly
18 sworn, testified as follows:

19 CLERK: Have a seat and state your full name, spell-
20 ing your last name.

21 WITNESS: My name is Kenneth H. Robison, R O B I
22 S O N, Senior.

23 DIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. Good morning, Mr. Robinson, how you doing?

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MR. ROBISON ON DIRECT

1 A. Fine. How about you?

2 Q. Fine, thank you.

3 Would you tell the jury what your employment is?

4 A. I'm director of security and a private investiga-
5 tor, one of the owners of Hawkeye Security and Investiga-
6 tion.

7 Q. Let me take you back to the year 2008. Did you
8 have an occasion to hire an individual by the name of
9 Andrew Torrence, Junior?

10 A. I did.

11 Q. And do you recall when you hired him?

12 A. I believe, if I'm not mistaken, it was May of 2008,
13 or in that area.

14 Q. And at the time you hired him, do you recall his
15 position as a security guard being either armed or unarmed?

16 A. He was initially hired as unarmed.

17 Q. And then at some point in time, did he become an
18 armed security guard?

19 A. He did.

20 Q. And do you recall when that occurred?

21 A. It was several months or a couple of months later,
22 I believe.

23 Q. Let me take you to September 27. Was he assigned
24 a job on that day or night?

25 A. Yes, sir.

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MR. ROBINSON ON DIRECT

1 Q. Do you recall where that was?

2 A. Rush's on Broad River Road.

3 Q. And would that have been an armed job or an unarmed
4 job?

5 A. Unarmed.

6 Q. Unarmed?

7 A. Unarmed.

8 Q. The weapons that your armed security officers are
9 allowed to carry, how is that determined by your company,
10 your policy?

11 A. The State Law Enforcement Division does that under
12 state law. They may carry up from a three eighty, an
13 automatic, to a forty-five or ten milimeter, calibers in
14 between, and in a revolver a thirty-eight or three fifty-
15 seven that must be loaded with thirty-eight caliber
16 rounds.

17 Q. And in order for to be an armed security guard for
18 your company, do they have to qualify with the weapon
19 which they carry?

20 A. They have to go through a training program and go
21 in a classroom, pass a test, required by state law, and
22 they are taken to a range to qualify, yes.

23 Q. And are they limited to that weapon?

24 A. No. A weapon of the caliber they qualify with,
25 yes, sir.

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MR. ROBINSON ON DIRECT

1 Q. When they are armed, are they only armed with a fire-
2 arm?

3 A. No.

4 Q. What other types of weapons do they -- are they al-
5 lowed to carry?

6 A. Upon completion of training they may carry pepper
7 spray, mace. They may also carry an ASP baton, or other
8 impact weapon such as that, as long as they've qualified
9 with it and been trained with it.

10 Q. Would those be considered non-lethal weapons?

11 A. Correct.

12 Q. Have you ever had the occasion to see Mr. Torrence
13 in any type of altercation?

14 A. Yes.

15 Q. And do you recall when that occurred?

16 A. Not exactly. Several.

17 MR. FLOYD: Your Honor, . .

18 THE COURT: Yes, sir.

19 MR. FLOYD: . . I have a matter of law.

20 (Conference at the bench between counsel and the
21 Court)

22 BY SOLICITOR:

23 Q. Mr. Robison, on September 28th, 2008, did you re-
24 ceive a call from Andrew Torrence?

25 A. I did.

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MR. ROBISON ON DIRECT

1 Q. And approximately what time was that?

2 A. Well, I received a few throughout the morning when
3 I was asleep and did not answer.

4 At eleven A.M. I received a call that I answered.

5 Q. Was it Mr. Torrence?

6 A. Yes.

7 Q. What was the content of that call? Do you recall
8 it?

9 A. He told me he was in the Lexington County Jail; that
10 he had been arrested for a shooting.

11 He stated that he had shot a guy who had jumped him.

12 Q. Did he say anything that he had done prior to the
13 shooting?

14 A. I asked him where it occurred, and he told me the
15 location, and I said, you had a gun in a bar, and he then
16 stated, no, I went out and got the gun from my truck.

17 Q. Do you recall him saying that he had called the West
18 Columbia Police Department?

19 A. He said he called nine one one and I believe he said
20 WCPD.

21 Q. WCPD?

22 A. Right.

23 Q. Which is . .

24 A. The West Columbia Police Department.

25 Q. The West Columbia Police Department?

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MR. ROBISON ON DIRECT

1 A. Right.

2 Q. And did he say whether or not he talked to anyone?

3 A. He said he told them to come to Shaggy's. He didn't
4 go into depth on it.

5 Q. Thank you very much. That's all I have.

6 Please answer any questions Mr. Floyd may have.

7 THE COURT: Thank you, Solicitor.

8 Mr. Floyd?

9 MR. FLOYD: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. FLOYD:

12 Q. Pursuant to his record of employment with you as his
13 boss, he was supposed to call you if he got arrested?

14 A. Yes, sir.

15 Q. Thank you. No further questions.

16 THE COURT: Redirect, Solicitor?

17 SOLICITOR: No, sir, Your Honor.

18 THE COURT: Thank you very much, Mr. Robison. You
19 may step down.

20 (Witness excused from stand)

21 THE COURT: Solicitor, you may call your next wit-
22 ness.

23 SOLICITOR: The State calls Lynn Baldwin.

24 THE COURT: All right, Ms. Baldwin, if you'd come
25 around and be sworn for us, please.

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1 LYNN BALDWIN, being duly sworn,
2 testified as follows:

3 CLERK: Please have a seat and when you are seated
4 state your name, spelling your last name for the re-
5 cord, please.

6 WITNESS: Betty Lynn Baldwin, B A L D W I N.

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. Ms. Baldwin, where are you employed?

10 A. By Rush's.

11 Q. And on September 27th into September 28th of 2008,
12 where were you?

13 A. At Rush's on Broad River Road.

14 Q. What was your job duty at Rush's on Broad River Road
15 at the time?

16 A. Manager.

17 Q. Are you still a manager there today?

18 A. Yes, sir.

19 Q. Does Rush's have security?

20 A. On the weekends, during like the football games.

21 Q. Do you remember whether or not there was security on
22 the night of September 27 to the morning of September
23 28th, 2008?

24 A. Yes, sir.

25 Q. Do you recognize anybody in the Courtroom as being a

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MS. BALDWIN ON DIRECT

1 security guard for that night?

2 A. I don't recall exactly the face.

3 Q. But you remember you did have a security guard?

4 A. Absolutely, yes.

5 Q. I show you Defense Exhibit Number 7, and ask if you
6 recognize that, specifically referring to the bottom of
7 the page where it talks about September 27th?

8 A. Yes, sir.

9 Q. What is that document?

10 A. This is the security sheet that we do when they come
11 in. They sign in and when they leave they sign out.

12 Q. Could you explain to the jury how that process would
13 work?

14 A. They come in and we bring the sheet up. They sign
15 their name or sign in, and when they leave which is usu-
16 ally before we leave, they sign out and sign their name.
17 Then we turn it in to the office.

18 Q. Do you recognize your signature on there?

19 A. Absolutely.

20 Q. So what time did the security guard come in that
21 night?

22 A. At nine P.M.

23 Q. And can you read the signature of the person who
24 signed it?

25 A. I can tell only because I know the name Andrew, and

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MS. BALDWIN ON DIRECT

1 other than that, I can't.

2 Q. What time did that individual sign out?

3 A. Pardon me.

4 Q. What time did that individual sign out?

5 A. One fifty.

6 Q. What are you doing during the hours of nine to one
7 fifty?

8 A. I'm doing my shift, handling the customers. It's
9 really busy.

10 I am running things on my end and . .

11 Q. What is the security guard supposed to be doing for
12 you?

13 A. They are supposed to be actually outside on the prem-
14 ises for us, continuously walking. You know, doing secur-
15 ity for the building.

16 Q. Do you remember seeing Mr. Torrence working as a se-
17 curity guard between on September 27th between nine o'clock
18 and one fifty?

19 A. No.

20 Q. Would it be unusual for you to have not seen the se-
21 curity guard?

22 A. It would be usual that we don't -- they show their
23 face every once in a while, but if they don't show their
24 face I have no idea whether they are there are not be-
25 cause I'm so busy doing my job.

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MS. BALDWIN ON DIRECT

1 Q. So is it possible that the security guard on that
2 night or any night could disappear for a period of time?

3 A. Absolutely.

4 Q. How would you describe your contact with the indi-
5 vidual that night? Did you have any other contact with
6 him?

7 A. When they sign in, we usually don't see them until
8 later that night, like after we close -- after we close
9 at twelve.

10 Q. What time did the security guard sign out that night?

11 A. At one fifty A.M.

12 Q. What time did you leave work that night?

13 A. Two forty-six A.M.

14 Q. Did the security guard that was working with you in
15 the early morning hours of September 28th walk you to your
16 car?

17 A. No. Nobody walked me to my car.

18 Q. Thank you, Ms. Baldwin.

19 Please answer any questions Mr. Floyd may have.

20 THE COURT: Thank you, Solicitor.

21 Mr. Floyd.

22 MR. FLOYD: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. FLOYD:

25 Q. Ms. Baldwin, that form is signed by the person --

MS. BALDWIN ON CROSS

1 by the security guard?

2 A. Yes.

3 Q. And you see him at that time, don't you?

4 A. Right.

5 Q. And on that occasion when Mr. Torrence signed at one
6 fifty A.M., did you notice anything unusual about his de-
7 meanor?

8 A. Not that I recall.

9 Q. If he had smelled of alcohol, . .

10 A. I would have definitely noticed it.

11 Q. . . would you have reported that?

12 A. Right.

13 Q. Now, you have been work Rush's how long?

14 A. Twenty-three years.

15 Q. And you know your job?

16 A. Right.

17 Q. You're good at your job?

18 A. Good.

19 Q. And do you think that if you didn't see that secur-
20 ity guard every now and then you would wonder where he
21 was?

22 A. No, because I'm busy doing my job, handling my em-
23 ployees.

24 Q. So you don't recall him being gone?

25 A. I wouldn't know whether he was or not. I'm doing my

MS. BALDWIN ON CROSS

1 job.

2 Q. But you have no information or evidence that he did
3 leave?

4 A. No, sir.

5 Q. No question that when he signed out at one fifty he
6 did not have an odor of alcohol?

7 A. I don't recall.

8 Q. You said if you had noticed it you would have reported
9 it?

10 A. Yes.

11 Q. Thank you. No further questions.

12 THE COURT: Redirect, Solicitor?

13 SOLICITOR: No, Your Honor.

14 THE COURT: Thank you very much.

15 Thank you for being with us, Ms. Baldwin. You may
16 step down.

17 (Witness excused from stand)

18 THE COURT: All right, Solicitor, you may call your
19 next witness.

20 SOLICITOR: Your Honor, those are all the witnesses
21 the State would have in reply.

22 THE COURT: Thank you very much.

23 Mr. Floyd, do you have any evidence or testi-
24 mony in surreply?

25 MR. FLOYD: No, Your Honor.

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1 THE COURT: Thank you.

2 Mr. Foreman and ladies and gentlemen of the jury,
3 you have now heard all of the testimony that you're going
4 to hear in the trial of this case.

5 Momentarily, I'm going to give you a brief recess.
6 When you come back, we will hear the closing arguments
7 by the attorneys.

8 Is the State going to open, Solicitor?

9 SOLICITOR: No, Your Honor.

10 THE COURT: The procedure we follow in a case such
11 as this is that Mr. Floyd will present the closing argu-
12 ment on behalf of his client, Mr. Torrence.

13 Then you will hear from the Solicitor, who will pre-
14 sent the closing argument on behalf of the State.

15 The State being the party that bears the burden of
16 proof, they present their closing argument last generally.

17 After the closing arguments, I will instruct you on
18 the law that applies to the facts of this case.

19 They case will then be submitted for your delibera-
20 tions and your verdict.

21 I haven't discussed with the attorneys how long they
22 will argue. However, generally what I do when we've been
23 out here for a while as the attorneys are closing is to
24 take a brief recess, depending on how long that closing
25 is, or we may not.

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1 Again, it all depends on how long you and I have
2 been seated out here.

3 My charge to you will be the last part, and we may
4 take a break, as I say, between the closings or after
5 the closings, before my instructions to you on the law of
6 this case.

7 Please remember that you are not to discuss this
8 case with your fellow jurors or anyone else until you
9 have heard the closing arguments by the attorneys, the in-
10 structions on the law by the Court, and then are directed
11 by the Court to begin your deliberations with your fellow
12 jurors in your jury room.

13 I will give you about a twenty minute recess, Mr.
14 Foreman and ladies and gentlemen.

15 If you would leave your notes again upside down on
16 your chairs and go with the bailiff to your jury room.

17 Thank you very much.

18 (Jury excused from Courtroom)

19 THE COURT: All right. We discussed at the witness
20 stand the State's Cross Examination of Mr. -- excuse me,
21 the State's Direct Examination of Mr. Robison concerning
22 observing the Defendant in a prior confrontation -- I for-
23 get the exact words that he used.

24 I specifically ruled under 608 B that specific in-
25 stances of the conduct of a witness for the purpose of

1 attacking or supporting the witness' credibility other
2 than the conviction of a crime provided in Rule 609 may
3 not be proved by extrinsic evidence.

4 I think that is clearly the law in South Carolina.
5 Further, under Am Jur Second -- One Am Jur Second, Wit-
6 nesses, Section 960, it would have to be a matter that
7 is material to the issue and cannot go into a collateral
8 matter by extrinsic evidence.

9 All right. Anything from the Defense, Mr. Floyd,
10 at this time?

11 MR. FLOYD: At this time with the case completely
12 over, we would renew our motions for a directed verdict
13 of acquittal on the grounds that the evidence, even when
14 taken in the light most favorable to the State, fails to
15 establish beyond a reasonable doubt the offense of mur-
16 der, and there is absolutely no showing or evidence of
17 any intent on Mr. Torrence's part to commit murder or
18 manslaughter.

19 Furthermore, the evidence fails to establish that
20 the death of Mr. Chaplin occurred as a proximate cause of
21 actions taken by Mr. Torrence.

22 We would renew all motions made during the trial,
23 including the motion to dismiss for prosecutorial miscon-
24 duct, as well as our motion to allow into evidence the
25 videotape from the car of Officer Griffin, the audio

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1 portion showing the jury Mr. Torrence's state of mind and
2 also his coherence, sobriety.

3 THE COURT: Do you care to respond to any or all
4 of those motions, Solicitor?

5 SOLICITOR: No, Your Honor.

6 THE COURT: All right. I would renew my previous
7 rulings and respectfully deny the motions for directed
8 verdict.

9 I would renew my previous ruling as to denying the
10 Defendant's motion to dismiss based on prosecutorial mis-
11 conduct.

12 I would renew my ruling as to the videotape state-
13 ments on the in-car video.

14 All right, as to the charge, Solicitor, have you re-
15 viewed the requests -- I can take it in any order you want
16 to, Solicitor and Mr. Floyd. I just happened to have Mr.
17 Floyd's requests on top.

18 Have you reviewed his requests to charge?

19 SOLICITOR: I have not, Your Honor.

20 THE COURT: Do you all want to take a recess and
21 then come back and let me know your position on those mat-
22 ters?

23 SOLICITOR: Yes, sir.

24 THE COURT: All right, we'll take about a fifteen
25 minute recess and then get square on the requests to

1 charge.

2 Thank you very much. The Court will be in recess
3 for fifteen minutes.

4 (Whereupon, the Court took a brief recess, after
5 which the matter was resumed)

6 THE COURT: All right, Solicitor and Mr. Floyd, did
7 you all have an opportunity to review each other's re-
8 quests to charge?

9 SOLICITOR: Yes, Your Honor.

10 THE COURT: All right, Solicitor. Your position?

11 SOLICITOR: The Defendant's request number one, I
12 would ask for your standard charge on proximate cause.

13 THE COURT: Let me see.

14 (Brief pause)

15 THE COURT: All right, Mr. Floyd. I have a charge
16 on proximate cause, and a part of that charge cites State
17 versus Burton, State versus Clary.

18 I think it would be in the vicinity of your request
19 to charge.

20 MR. FLOYD: If you've got that already covered, that
21 is . .

22 THE COURT: Actually it is much broader than your
23 request to charge. Okay.

24 Solicitor?

25 SOLICITOR: Again, your Honor, on the charge of self-
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1 defense or request to charge on self defense, I would ask
2 again for your standard charge.

3 THE COURT: Am I to -- I do have the standard charge,
4 and I have acting on appearances.

5 MR. FLOYD: That pretty much is standard . . .

6 THE COURT: I think my charge is much more expansive,
7 frankly, than your request although that encapsulates
8 Judge Anderson's.

9 SOLICITOR: You have Judge Anderson's . . .

10 THE COURT: Yes, sir.

11 SOLICITOR: Mr. Floyd's request to charge number 4,
12 on accident, I don't believe that is appropriate under
13 the facts of the case.

14 THE COURT: All right. Mr. Floyd, I'll be glad to
15 hear from you in that regard.

16 MR. FLOYD: Your Honor, I think the evidence can be
17 viewed in such a way as to encompass this charge.

18 Basically, I don't think he intended to kill him and
19 the killing was unintentional.

20 I think he believed he was acting lawfully to af-
21 fect a citizens' arrest, that he intended to make a citi-
22 zen's arrest. In the care and exercise of having the
23 weapon he did not point it at anyone until he perceived
24 that there was a threat of the weapon being taken from
25 him.

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1 THE COURT: All right. I will deny that request.
2 I do not intend to charge accident or involuntary man-
3 slaughter.

4 I do not think he was acting lawfully in unlawfully
5 arming himself in that regard.

6 Yes, sir, Solicitor?

7 SOLICITOR: You are not giving a charge on involun-
8 tary manslaughter?

9 THE COURT: I am not.

10 SOLICITOR: I do not have a copy of the jury charge
11 number three involving citizen's arrest, or request number
12 three.

13 I know that Mr. Floyd would argue that it was an
14 accident and what it has is a correct statement of the
15 law, but I believe there is some language that needs to
16 be added to that.

17 I don't know what Your Honor has in that regard as
18 far as your charge.

19 THE COURT: I would, quite frankly, be somewhat guided
20 by you all in that regard and only as far as citizen's
21 arrest is concerned.

22 I will be glad to pull these cases especially the
23 Cooney case, and look at the language in those cases.

24 You don't have an objection to that charge with some
25 additional language, Solicitor?

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1 There is expansive language in the Cooney case that
2 I will be glad to add. You don't have objection to it,
3 but you just think it need something additional, Solici-
4 tor?.

5 SOLICITOR: I have no problem if language is added
6 to it, as it is discussed.

7 THE COURT: The language in that case?

8 SOLICITOR: Some of it. I mean, there is State v.
9 Nail, another case that provides language.

10 THE COURT: Is that N A I L?

11 SOLICITOR: N A I L, and the cite is 404 SE 2d 404,
12 and there is language in there that is relevant to this
13 case.

14 THE COURT: I will work on that charge and look at
15 that language.

16 Anything else?

17 SOLICITOR: Also, in the same line, Your Honor, un-
18 der Cooney, which I have a cite -- I don't know but I
19 have State versus Cooney, which is 473 SE second 597 from
20 1995.

21 I think there they talk about reasonableness, of
22 course. That case has to do with a felon who is fleeing,
23 and that in a citizen's arrest the jury has to look at
24 the totality of the determination of the use of force in
25 -- the determination of the reasonableness of the use of
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1 force; that it depends on the facts of the case and is a
2 question for the jury.

3 It says they have to consider all the facts and cir-
4 cumstances.

5 THE COURT: All right, I will look at that as well.

6 SOLICITOR: Another thing that I would ask, Your
7 Honor, to be in there is that South Carolina recognizes
8 that there is no right to arrest without a warrant for
9 the offense.

10 THE COURT: All right.

11 SOLICITOR: Because if there is no one to determine
12 whether a felony was committed or if there is a misde-
13 meanor committed . .

14 MR. FLOYD: But, Your Honor -- sorry. I didn't mean
15 to interrupt.

16 THE COURT: I don't know how a warrant would ever
17 come into play in a citizen's arrest, Solicitor.

18 SOLICITOR: No, it says -- I'm sorry. It says South
19 Carolina recognizes no right for a citizen's arrest with-
20 out a warrant for misdemeanor.

21 It stands for the proposition -- I believe it was a
22 breach of peace case where someone was trying to arrest
23 someone for breach of peace, and it basically says there
24 is no right to arrest for a misdemeanor; that you can only
25 arrest for a felony.

1 So the jury has to come to a determination that it
2 was a felony.

3 MR. FLOYD: Your Honor, there are two statutes on a
4 citizen's arrest. and they are referred to in my request
5 to charge.

6 If you read it, there must be a determination that
7 there was a felony involved in the incident, and also the
8 Defendant must have a reason to believe he has a right to
9 make the arrest, whether or not the circumstances actu-
10 ally result in a felony.

11 It's our position that is what is determinative of
12 the issue.

13 SOLICITOR: Your Honor, there is no basis for a rea-
14 sonable belief that a felony was involved.

15 Citizens used to be able to arrest for a breach of
16 peace, misdemeanors and felonies, but that was abrogated
17 by the South Carolina Code numerous years ago.

18 And now a citizen's arrest is controlled solely by
19 whether there is a felony, and the common law does not
20 apply any more.

21 THE COURT: Can you point to the statute?

22 SOLICITOR: It's 17 13 10.

23 MR. FLOYD: Your Honor, another case that could give
24 you some guidance in this area is McNeal at 13 Southeast
25 Second 10.

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1 THE COURT: What was that cite again, Mr. Floyd?
2 MR. FLOYD: It's 13 Southeast Second 10.
3 THE COURT: Thirteen Southeast Second 10?
4 MR. FLOYD: Yes, sir, or do you need the SC cite?
5 THE COURT: No, sir.
6 (Brief pause)
7 THE COURT: You cite 13 Southeast Second?
8 MR. FLOYD: Yes, sir. I have a copy of it.
9 THE COURT: All right.
10 Do you have any reply to that, Solicitor?
11 SOLICITOR: Your Honor, it's my understanding that
12 17 13 20 talks about arresting a person regarding the prob-
13 ability of escape . . (reading rapidly)
14 REPORTER: I'm sorry -- arresting a person . .
15 SOLICITOR: Arresting . .
16 THE COURT: Only as to subsection A. All right.
17 MR. FLOYD: Your Honor, we would suggest also that
18 that statute authorizes use of force.
19 THE COURT: Yes, sir, I understand. From the begin-
20 ning of it to the comma after Subsection A.
21 That's what you are referring to, Mr. Floyd?
22 MR. FLOYD: Yes, sir.
23 THE COURT: Okay, but going to fleeing and all of
24 that, that doesn't apply.
25 MR. FLOYD: Yes, sir.

1 (Brief pause)

2 THE COURT: All right, I'll work on that charge.

3 MR. FLOYD: Thank you.

4 THE COURT: Let me see where the Solicitor is at.

5 SOLICITOR: I do believe, Your Honor, that there is
6 some language on here that we don't have here, that for a
7 citizen's arrest -- there is probably a requirement for
8 some requirement that he is not held to the same standard
9 as a police officer.

10 I can't remember -- there was a case that came out
11 where -- I don't remember all the facts that were there,
12 but it held that he is not held to the same standard as a
13 police officer; that he has not gone through the same
14 training and so forth.

15 THE COURT: All right. As to voluntary manslaughter,
16 Solicitor?

17 SOLICITOR: I would leave that in Your Honor's dis-
18 cretion. I think that he has not met requirements of
19 that, under State versus Starnes.

20 THE COURT: Yes, I'm going to charge voluntary. I
21 think there are other cases besides State versus Starnes.
22 I think that is a different factual scenario in that re-
23 gard, Solicitor. I think he has met the requirements.

24 I think it is a jury issue as to whether or not there
25 was sufficient cooling time.

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1 SOLICITOR: So you are charging murder, voluntary man-
2 slaughter, assault and battery with intent to kill.

3 THE COURT: Yes, sir.

4 SOLICITOR: Are you charging assault and battery of
5 a high and aggravated nature?

6 THE COURT: My position right now, Solicitor, is if
7 I charge voluntary I would charge assault and battery of
8 a high and aggravated nature.

9 The way I will explain it to the jury is that when
10 -- in working on the verdict of murder, first they de-
11 termine on the charge of murder probable cause; voluntary
12 manslaughter as a lesser included offense.

13 If they find the injuries or injury inflicted by the
14 Defendant was not the proximate cause of the victim's
15 death, then they would be authorized to consider assault
16 and battery with intent to kill, or the lesser included
17 offense of assault and battery of a high and aggravated
18 nature.

19 So I guess the hierarchy is murder, voluntary man-
20 slaughter, not guilty, or if they say death was not the
21 proximate cause by the gunshot, they would consider in-
22 tent to kill, assault and battery of a high and aggravated
23 nature, or not guilty.

24 Of course, in possession of a firearm, if they find
25 him guilty of murder or voluntary manslaughter, or of

1 assault and battery with intent to kill, those are vio-
2 lent crimes and, of course, the weapon on the premises, is
3 guilty or not guilty.

4 SOLICITOR: Your Honor, I'm sorry, but going back
5 to citizen's arrest, . .

6 THE COURT: Yes, sir.

7 SOLICITOR: . . how are you going to define felony for
8 the jury?

9 I mean, that is obviously an important question for
10 the jury.

11 THE COURT: Mr. Floyd?

12 SOLICITOR: I don't know that Mr. Floyd has -- he's
13 got two people that he has said he thought were attacking
14 him, but I don't know what he's saying constitutes the
15 felony.

16 I don't know what he will be saying to the jury.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: Well, I'm not sure it is a question for
19 the jury. I think there are two potential felonies here.
20 One is the -- one is lynching, and one is kidnapping.

21 THE COURT: Do you want me to define it by a laundry
22 list?

23 SOLICITOR: I guess I don't know the answer, but I
24 believe the jury has to make a determination whether or
25 not there was a felony. They will need more than just

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1 the word, felony.

2 I guess we could ask Mr. Floyd to enumerate what he
3 thinks they are, if he thinks it's kidnapping and lynch-
4 ing, or whatever other felonies he thinks . .

5 MR. FLOYD: I don't think the law requires there to
6 be a question of felony for the arrest warrant. I mean,
7 it may be looked at later, but it is in the mind of the
8 person making the arrest.

9 I think the cases seem to say that there may not
10 necessarily be a felony, as long as the person doing the
11 acting believed that there was.

12 THE COURT: Well, that may be for civil matters, or
13 for civil purposes.

14 (Brief pause)

15 SOLICITOR: In State v Cooney, Your Honor, what they
16 were referring to was -- I believe that's the case where
17 the father believed his daughter's car was being broken
18 into, and they said that goes not into the view of the
19 felony being committed, but it goes to the father having
20 information a felony had been committed, and whether it
21 was reasonable or not, and they found, I believe, that
22 that was not a felony and the belief was not reasonable.

23 So I think from a reading of this that the jury
24 has to find that a felony was committed before they can
25 permit the defendant's citizen's arrest.

1 So that you are held responsible for being wrong, it
2 seems.

3 THE COURT: Well, if you read footnote 7 and 8 of
4 Cooney -- footnotes 7 and 8 -- within the body of Cooney,
5 they talk about the Trial Judge's discretion as far as
6 the evidence is concerned, but then it goes on to say ac-
7 tual guilt of a suspect is not required to justify the
8 citizen's arrest.

9 The right to make a citizen's arrest may be based on
10 certain information that a felony has been committed.

11 There was evidence admitted which established that
12 the felony had been committed, and under State versus Nall,
13 N A L L, and there is another case, N A I L -- if it was
14 later found that the person arrested -- in this case it
15 would be Mr. Buchanan or Mr. Chaplin -- if it was later
16 found that the person arrested did not commit the felony,
17 the arrest would still be lawful if there was reasonable
18 cause for suspicion.

19 So I think, if I understand Mr. Floyd's position, a
20 citizen may make an arrest, even in a criminal setting,
21 does not have to be correct as to whether or not it is
22 or is not a felony.

23 SOLICITOR: The difference in that, Your Honor, is
24 that, as I read it, 17 13 10 -- the first section says
25 upon viewing a felony committed -- Mr. Torrence was there

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1 and he saw what happened.

2 The second section of 17 l3 10 says that upon certain
3 information that a felony has been committed, which is
4 not the case here.

5 THE COURT: It is even more specific in this case.
6 He is acting on his observations that he was assaulted
7 by two people.

8 In other words, it's nothing but hearsay of Mr.
9 Torrence to Mr. Torrence. I'm not saying it was or was
10 not a felony.

11 I'm saying he does not have to be correct as to whe-
12 ther it was or was not a felony.

13 Do you have a position in that regard, Solicitor?

14 SOLICITOR: I mean, I understand what Your Honor is
15 saying.

16 I object to it, but I understand what you're saying,
17 Your Honor. I would have nothing more to add.

18 THE COURT: Anything further in regard to the citi-
19 zen's arrest?

20 SOLICITOR: No, sir.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: Nothing further.

23 THE COURT: All right, Solicitor. Next?

24 SOLICITOR: I would -- and I've never done this be-
25 fore so I don't know how this works.

1 It's my understanding that you would charge the ap-
2 plicable law not just to the Defendant but to the case
3 in general?

4 THE COURT: Correct.

5 SOLICITOR: Accordingly, Your Honor, the State would
6 ask for a charge about the right to resist an illegal ar-
7 rest.

8 I would pass up to you and to Mr. Floyd and I've
9 highlighted what I believe is appropriate dealing with
10 the right of Mr. Chaplin to resist an illegal arrest.

11 THE COURT: All right. Mr. Floyd?

12 MR. FLOYD: Your Honor, we would object to that
13 charge in this situation in this case.

14 It is our position that Mr. Torrence was acting upon
15 his belief that he is making a lawful arrest, and it is
16 a comment on the facts . .

17 THE COURT: Well, all of this goes to the intent of
18 the parties, the totality of the circumstances, and I'd
19 think that part of the totality of the circumstances is
20 the actions or reactions of Mr. Buchanan and Mr. Chaplin,
21 along with -- I don't think you can tell the jury the law
22 in a vacuum.

23 You know, if I -- I mean, I think I would be mislead-
24 ing the jury if I only focus on the right or that Mr.
25 Torrence was exercising his right to make a citizen's

1 arrest and not also give them the law as to what rights
2 Mr. Buchanan or Mr. Chaplin had.

3 So I think I would charge that.

4 SOLICITOR: Thank you.

5 THE COURT: All right, anything further?

6 SOLICITOR: Additionally, Your Honor, the State would
7 ask for a defense of others charge which I have highlighted
8 in what I'm handing up.

9 THE COURT: Who is that as to?

10 SOLICITOR: That would be referring to Mr. Chaplin,
11 Mr. Buchanan, Ms. Reynolds at the bar, Ms. Muszynski under
12 the table.

13 THE COURT: I mean, how do we know that's what he
14 was doing?

15 SOLICITOR: Well, I don't know but I think it's a
16 jury question.

17 We can only go by his actions. He had an opportun-
18 ity to leave.

19 The video shows Mr. Buchanan being held on the bar.

20 THE COURT: Mr. Floyd?

21 MR. FLOYD: Well, Your Honor, I don't think there is
22 any evidence to support that charge, Your Honor.

23 There was no evidence that anyone's life was threat-
24 ened. No action he took against anyone else.

25 THE COURT: I will word that within the self defense

1 charge.

2 SOLICITOR: That's all we would have.

3 THE COURT: Anything further, Mr. Floyd?

4 MR. FLOYD: Yes, Your Honor. We would like Your
5 Honor to charge involuntary manslaughter.

6 THE COURT: I deny that. I thought I had denied
7 that earlier.

8 MR. FLOYD: I'm sorry. I may be in error but I did
9 want to make sure I put it on the record.

10 THE COURT: I do not think you can reach the elements
11 of involuntary manslaughter, in regard to the circumstances
12 of this case.

13 Anything further?

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: All right, bring us our jury.

16 (Jury returned to Courtroom)

17 THE COURT: All right. Welcome back, ladies and gen-
18 tlemen. I apologize for the delay.

19 You will recall that prior to the recess I informed
20 you that we would next hear the closing arguments by the
21 attorneys.

22 The procedure we will follow is that Mr. Floyd will
23 close in behalf of his client, Mr. Torrence, and followed
24 by closing argument by the Solicitor in behalf of the
25 State.

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1 Thereafter, I will charge you both the general law
2 and the law that applies to this case.

3 You will recall there are three indictments. There
4 is an indictment for murder, an indictment for possession
5 of a weapon during the commission of a violent crime, and
6 an indictment for carrying a pistol or firearm onto the
7 premises of a business that has alcoholic beer, liquor or
8 wine for on-premises consumption.

9 You would have to return a verdict as to all of those
10 indictments.

11 Encapsulated within the charge of murder is a lesser
12 included offense of voluntary manslaughter.

13 Additionally, if you find that the injuries inflicted
14 by Mr. Torrence -- that he could be found not guilty of
15 murder and not guilty of voluntary manslaughter, or not
16 guilty of either one, but if you find that the injuries
17 inflicted were not the proximate cause of the death of the
18 victim, you could also consider the charge of assault and
19 battery with intent to kill, and a lesser included charge
20 of assault and battery of a high and aggravated nature.

21 I will explain these charges you in more detail after
22 the closing arguments.

23 Ladies and gentlemen, please give the attorneys your
24 undivided attention.

25 For all others in the Courtroom, I do not allow any

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1 movement in or out of the Courtroom during the brief time
2 in which the attorneys are addressing the jury. You may
3 leave between the closing arguments and you may leave cer-
4 tainly at the end of the closing arguments and before the
5 beginning of my instructions to the jury.

6 With that being said, Mr. Floyd?

7 MR. FLOYD: Thank you, Your Honor.

8 Mr. Foreman and ladies and gentlemen of the jury, on
9 behalf of Andrew Torrence, I would like to thank you for
10 your presence. We talked a little bit about this in open-
11 argument, but the decision of the jury is by far the most
12 important decision in Mr. Torrence's life.

13 He is a man who has been charged with an offense, the
14 most serious offense, of murder. That's what we've got
15 here today.

16 We've got Andrew Torrence, a man you never met be-
17 fore, and he's charged with the worst crime in this
18 society, the killing of another person, and he has said
19 he is not guilty.

20 He is not guilty just simply because he has been
21 charged. He is not guilty simply because he has been ar-
22 rested.

23 He is not guilty simply because he sits here before you
24 now to be judged.

25 He is only guilty if the evidence proves to you all

1 beyond a reasonable doubt that he's guilty of murder, and
2 only you, the jury, twelve members of the community, unani-
3 mously agree that that evidence proves that guilt beyond a
4 reasonable doubt.

5 What do I mean by a reasonable doubt? A reasonable
6 doubt is that doubt which would cause a reasonable person
7 to hesitate to act -- that doubt would cause a reason-
8 able person to hesitate to act.

9 Take all of this evidence you heard in this Courtroom
10 and put it in the shape of this piece of paper, and because
11 of one piece of that evidence or the lack of one piece of
12 that evidence you would hesitate to convict him of this
13 charge, then it your obligation under the oath which you
14 took as jurors in the case to return a verdict of not
15 guilty.

16 Even if there is evidence in the case that makes you
17 suspicious that would be your obligation under your oath,
18 because when you vote guilty or not guilty you are not
19 voting on whether or not you think he's guilty, but what
20 you are voting on is whether the evidence proves his guilt
21 beyond a reasonable doubt. That is their burden of proof,
22 beyond a reasonable doubt.

23 As I stand here, as I speak to you, I will be making
24 some statements to you about the law in this case, and
25 I caution you this, that Judge McMahon is the Judge of

1 the law in this case.

2 When we lawyers finish speaking to you, he will read
3 you the law, called charging you the law, and if I should
4 say something to you about the law different from what he
5 tells you, it would not be my intention to do that and
6 you must go by what he says as the Judge of the law.

7 And as I stand here, I will be commenting to you,
8 talking to you, about pieces of evidence that came out in
9 this trial, as will the Solicitor.

10 You are the judges of the facts, and if we say some-
11 thing to you different then your memory of it, then it is
12 not intentional, but you are to go back to your jury room
13 and remember what you heard to be the evidence in the
14 case.

15 What does the State have to prove to you in order
16 for Mr. Andrew Torrence, Junior, to be convicted of the
17 crime of murder?

18 The State must prove to you that on the early morn-
19 ing hours of September 28, 2008, he did intentionally
20 kill Mr. Zachariah Chaplin with malice aforethought, with
21 evil in his heart; that he intended to kill him.

22 If that is indeed the case, why should you hesitate
23 to convict him? What is there about this case that would
24 make you hesitate before you vote on the issue of guilt?

25 I suggest to you that there is no evidence in this

1 case whatsoever that establishes that he had intent in
2 his heart to kill Zachariah Chaplin whatsoever. The
3 State has not proved its case. The State has not proved
4 his guilt.

5 Now, before I get into the evidence, I want to point
6 out something to you, and that is sometimes how you have
7 to interpret some things you hear in a case.

8 It has nothing to do with the facts in the case it-
9 self, but it is just to show you what the intention was.

10 You all, of course, were able to see this tape, and
11 I'll show you what to look at again. This is the tape
12 the State has shown you and said this is evidence that Mr.
13 Torrence is guilty of murder.

14 If you will recall, both Mr. Buchanan and Donna
15 Muszynski-- both of them said after he was struck in the
16 face approximately a dozen times by Zachariah Chaplin and
17 left -- what did they say?

18 They said they were not celebrating, but everything
19 went back to normal. You all look at that tape.

20 When Andrew Torrence walked out of the door, what
21 do you see? Pats on the back, friendly touching, all of
22 that. It's all there.

23 Now, why were we hearing this kind of testimony?
24 Human nature is such that most people want to say things
25 that would help their friends to overcome their enemies, to

1 place themselves on the side of their friends.

2 So when you hear some of this testimony, consider
3 if that is what is going on.

4 Now, was there any intent -- was there any intent?
5 When you look at this tape, here's what you see.

6 We know that Andrew Torrence is seated at the bar.
7 If you look at it, I believe his testimony was that he
8 was apologizing for what he might have said. You can see
9 it there.

10 Zach Chaplin gets out of his seat, walks over -- he
11 walks over and starts pounding Drew Torrence in the face.
12 Lee Buchanan said he tried to break it up, and he seems
13 to be pushing Mr. Torrence.

14 But Drew Torrence never grabs Zach Chaplin nor is
15 he trying to hit him. I would suggest -- let me suggest
16 something to you.

17 That in itself is an assault. It's an assault by
18 Mr. Chaplin on Andrew Torrence. An assault and battery.
19 It's also a kidnapping because when you restrain a person
20 in that fashion, that's considered kidnapping.

21 Now, there is the crime that is committed upon Drew
22 Torrence. So what does he do?

23 He goes out and makes an effort to call nine one one
24 but there is a problem with that during the call. If you
25 will look at page four of six, at the bottom down here,

1 on page four of six at the bottom, a call came in.

2 So what he did was take his weapon, go back into the
3 bar with intention of detaining them.

4 Now, here is where you have to make your decision.
5 The State's case or the State's theory is that he grabbed
6 that gun to go back in and kill somebody, Zach Chaplin.
7 That's their case.

8 If you don't think he went in there to kill somebody,
9 that's not murder. He didn't intend to kill him.

10 Then to try to put this theory together that somehow
11 he was going to kill him because he thought Donna
12 Muszynski liked Zach better than him. Does that make sense?

13 Do you know why they put that theory together for
14 you? Because they've got to come up with some kind of
15 motive for you, because they know it would take that for
16 them to show he went in there to kill somebody.

17 So they've got to come up with this motive, but,
18 ladies and gentlemen, it just doesn't fly.

19 Donna wasn't even there for Zach. Donna was there
20 looking for this other guy, Zach's friend, and she can't
21 remember any conversation she had with him, except that
22 it wasn't pleasant, you know. Think about that.

23 Think about the way they are trying to spin their
24 theory, to come up with their version of the story, but
25 Donna comes up with, I was looking for this other guy.

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1 Also, they put up Tonya Mozenko and her friend, Mr.
2 Smith, to help to spin their theory.

3 Do you remember my cross examining Ms. Mozenko?

4 Are you sure you all went to the State Street Pub
5 at midnight and Drew was already there? Yes. Yes. I'm
6 sure, because the State depends on that.

7 Yes, that's what happened, but when was her state-
8 ment given? Her statement was made in December, several
9 months after this occurred.

10 What was the occasion for the statement Mr.
11 Smith made? He had occasion to be at the West Columbia
12 Police Department on another matter when he happened to
13 mention to the officer what had happened some time back.
14 Is there some relationship between this other matter and
15 the State to help the State in this case against Andrew
16 Torrence?

17 I suspect they didn't have too much because we know
18 the statement is not accurate. Because we know that Drew
19 Torrence was working at Rush's as a security guard until
20 one fifty in the morning.

21 So he could not have been at State Street when they
22 got there at midnight. So the whole premise of that
23 statement is false.

24 So how can the State use that to convict anybody of
25 anything?

1 And not only that, but Ms. Mozenko says she had to
2 terminate him, and this form is only signed June 15th,
3 but he was already working for the other security company
4 by the middle of May.

5 What did Ms. Baldwin say, the manager at Rush's? I
6 guess this gives a different outlook -- well, he must have
7 left his post at Rush's while he was supposed to be work-
8 ing, and he went over to the State Street Pub before mid-
9 night.

10 I guess to be there at midnight when Tonya and Steve
11 arrive.

12 And he has these four shots or six shots, however
13 many it was, and three beers, and then he goes back to
14 work -- after I guess having changed out of his security
15 uniform, gone there, had the shots, had the beers, and he
16 puts back on his security uniform, drives back out to
17 Rush's and checks out.

18 Ms. Baldwin says nothing was unusual about him, so
19 we know that theory will not fly either. Nothing unusual
20 and no odor of alcohol, nothing. That can't fly.

21 Now, let's look at what happened as far as the shoot-
22 ing. Look at Ms. Muszynski's testimony. She has cocaine
23 in her purse. She lies about it.

24 You know, another thing too. If you go back to the
25 part right after Drew Torrence leaves the bar -- go

1 back there, and you can tell me if I'm wrong. From the
2 testimony, she said when she got to the bar she gave her
3 purse to someone to put it behind the bar. I don't know
4 who, but what I do know is if you look at that video and
5 the time when there was a celebration because Drew had
6 just left, after Zach beat up Drew, the purse is there,
7 and there's a lot of going in and out of that purse.

8 I say purse -- pocketbook, I guess you'd say. It's
9 kind of long and narrow.

10 Anyway, let's get back to the main question. What
11 evidence is there that Drew Torrence intended to kill
12 Zachariah Chaplin?

13 Did he come in and, bam, bam? No. What you will
14 see is Drew telling Lee to put his hands on the bar. You
15 will never see that gun raised against anyone until the
16 very last moment.

17 And let me stop there and go on. All of a sudden
18 here at trial they call two witnesses. One is Tonya
19 Mozenko and the other is Lee Buchanan. All of a sudden
20 now -- all of a sudden, when we get here to Court, they
21 say that they saw him point the gun at them.

22 Of course, it's not on the video. It's not on the
23 video, so what's going on?

24 Why are they trying to put together this case out
25 of nothing?

1 Because that's what has happened here. They are
2 trying to make this into a murder case when they know it
3 is not a murder case by looking at the tape.

4 They put a guy up here, they put him on the stand,
5 and they get him to say, folks, he was pointing the gun
6 at me when I opened the door.

7 I know I never did say it before -- in September I
8 never did say it on those times I was questioned -- never
9 did say that.

10 Well, okay, it was two shots, by the way, although I
11 told them one back in September of 2008 when this thing
12 first happened.

13 People try to get their stories together in some
14 kind of way, to point the finger at Drew Torrence, to try
15 to convince you to convict him of murder when it's not a
16 murder case.

17 Let's talk about when he came back in the bar with
18 the gun, and what you see on the video.

19 Drew first sees Lee Buchanan, and you can see it on
20 the video. You can see the gesturing, and he gets Lee to
21 put his hands on the bar.

22 Just as Agent West from SLED said, yes, that is an
23 appropriate step when you are conducting an arrest of
24 somebody to control their hands, and that's what he did.
25 You can see that.

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1 He wanted to secure Lee when he went back in that
2 bar, and his intent was not to kill anybody, but to go
3 in there and make that citizen's arrest. He's not pointing
4 that gun at anybody.

5 The next thing that happens is a barstool is thrown
6 at him. Now, you look at that tape. Even when the bar-
7 stool is coming at him, he did not raise his gun toward
8 anybody, toward Zach, Lee Buchanan.

9 Because he wasn't there to kill anybody, he wasn't
10 there to hurt anybody. He was just trying to make a cit-
11 izen's arrest, and the Judge will charge you on the law
12 of citizen's arrest.

13 Then after throwing the barstool at Drew, Zach then
14 charged him. Look at the tape. Now, some of it is kind
15 of difficult -- it is kind of difficult to pick out the
16 exact spot, and I've tried to look at it again and again.
17 I tried to look at it last night, and it's -- because at
18 some point right before they meet Lee jumps on the bar.

19 Let's clear this up. You've kind of got a horse-shoe
20 bar, so you've got Zach charging. He's coming around the
21 horse-shoe here. You've got Zach charging, and you can
22 see Lee -- Lee's looking toward him, and you can see Drew
23 looking toward him. You can see that on the tape.

24 But he doesn't raise his gun at that time. He does
25 not shoot Mr. Chaplin, and then Zach comes around and he

1 reaches -- it is only when he is in that position, right
2 there to grab his weapon, that a shot was fired.

3 You can see the gun here, Zach there, and the shot.
4 Then the momentum carried him further and here is the sec-
5 ond shot.

6 You can see all of that on the tape, and you will
7 have this with you in your jury room.

8 Now, in this gun were thirteen rounds of ammunition.
9 Twelve in the magazine and one in the chamber. It was
10 testified to. That two shots were fired -- two shots.

11 Now ten, not five or thirteen, but two shots. Now,
12 if Drew had intended to kill Zach, why didn't he use the
13 rest of the bullets?

14 Zach is lying on the floor, and if he wanted to kill
15 him he could have fired another round or several more. He
16 could have done it, but he didn't do that.

17 What did he do? You heard about the phone call at
18 that time. I've shot somebody; send an ambulance.

19 Then the police come. What's this all about? I did
20 it, I'm the shooter, and he has given up his gun so there
21 is no more danger in there.

22 Now, in addition, the State has to prove that Andrew
23 Torrence, Junior, intended to kill Zach Chaplin, Zachariah
24 Chaplin, and they must also prove beyond a reasonable
25 doubt that the injury suffered by Zachariah Chaplin was

1 the proximate cause of his death.

2 What do we know about that? We do know this, that
3 after several weeks, he was released from or by Richland
4 Memorial Hospital, in stable condition, and not for addi-
5 tional medical treatment, but for rehabilitation.

6 We do know that there were many times that he then
7 refused treatment both at Richland Memorial Hospital and
8 at the Veterans Administration rehabilitation center, and
9 we are told that the cause of death was interim abdominal
10 hemorrhaging.

11 We heard on cross examination that with his condi-
12 tion there was no bleeding whatsoever from either one of
13 the gunshot wounds upon his release from the hospital.

14 And another curious thing is that the State did not
15 put in evidence the records from the Veterans Administra-
16 tion rehabilitation center.

17 Remember again that the burden is always upon the
18 State to prove its case beyond a reasonable doubt. So
19 where are those records from the Veterans Administration
20 rehab facility that the State does not want you to see?
21 Why did they not bring them in for you?

22 Now, one last thing in this case. Why did -- why did
23 Zachariah Chaplin charge Andrew Torrence? Why would he
24 do that?

25 My suggestion is that he had cocaine, amphetamines in

1 his system, and when you've got cocaine and amphetamines
2 coursing through our bloodstream, things can happen and
3 you do crazy things, and particularly when you have been
4 engaged in an altercation already, as all the witnesses
5 have said.

6 Now, the Judge is going to talk to you about the law
7 after the completion of these arguments, and what the
8 Judge tells you is what you have to use in deciding your
9 verdict.

10 In his charge, the Judge will tell you that the charge
11 of murder carries with it the lesser included offenses,
12 so that when one is charged with the crime of murder it
13 can carry with it what's called the crime of voluntary
14 manslaughter.

15 The difference between the two is that murder would
16 require evil intent beforehand, whereas in manslaughter
17 there may be some what they call provocation other than
18 just an evil heart causing the death.

19 However, remember that that still must be proven be-
20 yond a reasonable doubt. They must prove beyond a rea-
21 sonable doubt that Andrew Torrence, Junior, did intend to
22 kill Zachariah Chaplin for it to be murder.

23 There are other lesser included offenses which are
24 called assault and battery with intent to kill and also
25 assault and battery of a high and aggravated nature.

1 These come into play if you feel that there was an
2 intent on the Defendant to cause harm but it didn't result
3 in the proximate cause of death.

4 If your feelings are that there was intent to kill
5 but it didn't result in death, or that death came from
6 some other reason, then it would be assault and battery
7 with intent to kill.

8 If you think there was harm inflicted through the use
9 of a weapon but no intent to kill, then it's called an
10 assault and battery of a high and aggravated nature.

11 Now, the Judge will charge you about a number of
12 other things too, and one is what is called a citizen's
13 arrest.

14 He's going to tell you that if somebody sees some-
15 thing happen that is a felony, if a felony has been com-
16 mitted, a citizen has a right to make a citizen's arrest.
17 He will give you a charge on that, and we ask that you
18 listen carefully to that charge.

19 He had that right to do what he did here, to go in
20 there and try to detain the persons who had committed the
21 assault upon him.

22 The Judge will charge you on what is called self-
23 defense. What that means is that you have a right to
24 defend yourself, a right even to use deadly force to de-
25 fend yourself.

1 Now, Andrew Torrence is not the one who assaulted
2 and did physical harm to Zach Chaplin, but there was an
3 assault by Zach Chaplin on Drew Torrence and while Lee
4 Buchanan was holding both of his arms. It's on the video
5 that you have seen.

6 Andrew Torrence made the decision to make a citizen's
7 arrest, as he told you. He has told you that taking the
8 gun into that bar was the worst decision he's ever made
9 in his life.

10 I'm not standing up here to tell you he was a good
11 citizen, but it still doesn't make him guilty of murder
12 or manslaughter because he didn't take the gun in there to
13 harm anybody.

14 He went in there to detain them as he told you un-
15 til the police came, until he was threatened or he felt
16 his life was threatened. That's when he shot and not be-
17 fore that.

18 He didn't fire his weapon until he was attacked by
19 Zachariah Chaplin who was diving toward him to grab his
20 weapon.

21 He felt that he was threatened, his life was in
22 danger, and that is what caused him to shoot the weapon.

23 Please listen to the Judge's charge.

24 We recognize that he shot the gun twice. The ques-
25 tion is was he authorized to use that force, and he

1 was if he was threatened; if a reasonable person would
2 believe that they were threatened from what he had ex-
3 perience in the altercation that he did not institute.

4 You've got all of those factors to consider in this
5 case, so this is a case of self-defense, I suggest to you,
6 beyond a reasonable doubt, and he is not guilty of murder.

7 Now, the other things he is charged with, possession
8 of a firearm in the commission of a crime is the first,
9 and if you feel from the evidence that the State has
10 proven that Andrew Torrence, Junior, committed a violent
11 crime and that during that time he was in possession of
12 a weapon, then you would find him guilty of that charge.

13 The violent crimes that are involved in your consid-
14 eration today are murder, manslaughter, assault and bat-
15 tery with intent to kill.

16 Assault and battery of a high and aggravated nature
17 would not apply if that was the verdict. It is not con-
18 sidered in the scheme of things.

19 He is also charged with carrying a weapon into an
20 establishment that allows the consumption of alcohol,
21 beer or wine on its premises. We're not going to argue
22 against that. He freely admits that.

23 I ask you to consider the video. I ask you just to
24 look at it.

25 The way the system works, when I shut up and when I

1 go over there and I sit down, I don't get to say anything
2 else to you.

3 One of these fine Solicitors will get up behind me,
4 and they will be able to talk to you just like I'm talk-
5 ing to you now, and that means that they can comment on
6 the evidence like I've been commenting on the evidence.

7 And I suggest to you that they will talk about it
8 from a different viewpoint than I've talked about it, and
9 going last is an advantage, but, you see, the State has
10 that advantage because they have the burden of proof, and
11 the State therefore allows them to argue last, just like
12 they get to sit closest to you.

13 These are among the advantages they get because they
14 must prove the guilt of the Defendant beyond a reason-
15 able doubt.

16 So whatever they bring up, I do not get the opportun-
17 ity to come behind them and say, oh, I know they said
18 this, but what about this. I don't get that opportunity
19 to do that.

20 As far as you and I are concerned, once I sit down
21 nobody else is going to ever say anything to you in Mr.
22 Torrence's behalf. That is why I try to cover all the
23 questions.

24 You see, the system does not allow me to talk with
25 you individually, to say what questions do you have? What

1 questions do you have?

2 That doesn't matter, so I have to try to cover every-
3 thing here, you know.

4 All we can ask if for you to go back in that jury room
5 and think of how we could have responded if we had had
6 a chance to do that.

7 Remember that the law is all about intent. It is all
8 about intent. What were the intentions of Drew Torrence
9 when he went into that bar with a gun?

10 And unless the State has proved to you beyond a reason-
11 able doubt that Drew Torrence's intention of going into
12 that bar was to kill Zachariah Chaplin, then you could not
13 find him guilty of murder.

14 Now, you may need to see it again, the video, and when
15 he went in that bar the gun was pointed down. You will
16 never see on that video the barrel of that gun rise from
17 the direction of the floor until Zachariah Chaplin, with
18 cocaine and amphetamines coursing through his system, did
19 charge and leap toward him and try to take his gun away
20 from him, and then, and only then, did he fire.

21 Drew Torrence did not go into that bar with the inten-
22 tion of killing Zachariah Chaplin.

23 Thank you very much for your attention, and on be-
24 half of Andrew Torrence I appreciate your presence here
25 today and this week.

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1 Thank you very much.

2 THE COURT: Thank you, Mr. Floyd.

3 Solicitor?

4 SOLICITOR: Your Honor, if I could request a
5 brief recess?

6 THE COURT: Certainly. Ladies and gentlemen, if you
7 would leave your pads in your chairs and step to your
8 jury room.

9 Do not discuss the case, and we'll take a brief re-
10 cess.

11 Thank you.

12 (Jury excused from Courtroom)

13 (Whereupon, there was a brief recess, after which
14 the matter was continued)

15 THE COURT: Are you ready to begin, Solicitor?

16 SOLICITOR: Yes, sir.

17 THE COURT: Anything before we bring in the jury,
18 Solicitor?

19 SOLICITOR: We can go ahead and begin.

20 THE COURT: Anything from the Defense?

21 MR. FLOYD: No, Your Honor, except that Mr.
22 Graham and I have discussed the way in which the jury
23 would be able to view the videotape.

24 If they request to see it, they may need to have
25 someone show them how to operate the machine.

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1 THE COURT: All right.

2 SOLICITOR: Thank you.

3 THE COURT: Bring us the jury.

4 (Jury returned to the Courtroom)

5 THE COURT: Ladies and gentlemen, if you will give
6 now your complete and undivided attention to the closing
7 argument by the State, as you have done throughout the
8 trial of this case.

9 Solicitor?

10 SOLICITOR: To be the man, you've got to beat the
11 man.

12 Drew Torrence knew that, and he lived it on the morn-
13 ing hours of September 28, 2008.

14 This is a case about credibility, who are you going
15 to believe. Who is lying, who is telling the truth?
16 Why would people lie?

17 We know that Drew Torrence was at Shaggy's, and we
18 know all these other people were there as well. You will
19 have the video back with you to look at and you will have
20 this photograph that talks about the people who were on
21 it.

22 Now, the people who are on this were the people you
23 heard from. You heard from Tonya, the lady who owned the
24 security company which Mr. Torrence worked for, and her
25 friend, Stephen.

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1 They were the ones who were at the State Street Pub
2 and Drew Torrence drank with them. Then they all split
3 for a while, and they went to Shaggy's.

4 And what did they tell you? They told you that they
5 went to Shaggy's. They walked in and they sat down.
6 There were only a couple of seats available, and Mr. Drew
7 Torrence came over to them.

8 Mr. Torrence was immediately complaining about Zach
9 and Donna. Donna was the object of his affection, and,
10 you know, it didn't mean anything to her because you have
11 heard that she didn't really notice he was flirting with
12 her.

13 He was, because Tonya and Steve told you that he was,
14 because they said so, and why would they lie about that?
15 Why would they come in here and put their hands on the
16 Bible and lie to you about something that happened?

17 There is no reason given why they would lie, and
18 what did they tell you?

19 That he came and sat down, and he started telling
20 him how upset he was, how mad he was, how he, Zach, was
21 getting in his way when he had a chance with Donna, and
22 how mad he was at Zach; so mad at Zach that he said, not
23 once, not twice, but more than that, I'm going to go get
24 my gun and shoot him. Shoot him.

25 And at that moment he was telling you what he was

1 willing to do if he needed to, because he wanted to win.
2 He's not going to let somebody take a girl away from him.
3 He's not going to let somebody make him look bad, or let
4 somebody embarrass him, because Drew Torrence wants to be
5 the man.

6 But how else do we know that Tonya and Steve were
7 telling the truth?

8 What did Tonya tell you? The next morning she came
9 by and she saw the crime scene tape out, and she called
10 the bar owner, and what did she say? Drew shot Zach,
11 didn't he?

12 Sonny, the bar owner, came up on the stand, and he
13 told you, Tonya called me the next morning and said that.
14 Nobody is making that up.

15 Drew Torrence, I think, on his -- when he testified
16 he said he didn't remember that; that may be he did say
17 it. Drew Torrence said it and he meant it.

18 He meant that he was going to go get his gun and
19 shoot Zach. Drew Torrence told you on the stand that he
20 was drunk; that he had had ten beers in three and a half
21 hours and he said he was drunk. So did everybody else
22 in the bar.

23 He told you that he was obnoxious, didn't he? And
24 everybody in the bar agreed. He was crude and rude to
25 the bartender. He was crude and rude to Donna.

1 He was crude and rude to Lee, and he even made some
2 threats or remarks to Zach, but the remarks to Zach were
3 not enough.

4 So he moved on to Donna and Lee, and on the video
5 you can see Drew Torrence move over.

6 He sits down next to Lee, and he tells you he is there
7 to apologize, but Lee tells an entirely different story.
8 So does everybody else.

9 So why is everybody lying on Drew Torrence, or is it
10 maybe Drew Torrence who is lying?

11 They say he sat down next to Lee, and Mr. Torrence
12 wants you to believe he went there to apologize and say
13 he was sorry because somehow it makes people feel comfort-
14 able in a bar and you call them, gay guy -- when you come
15 in a bar to tell him, hey, gay guy, welcome to my bar.

16 You give that whatever weight you think it is worth,
17 but Lee didn't take it as that. Lee took it as him being
18 rude and obnoxious.

19 He said, leave me alone, go away, stop saying it --
20 on the video -- go back over there.

21 Did Drew Torrence do that? No, he kept saying it
22 again, and even whispered in his ear, you want to kiss
23 my ass.

24 Drew Torrence said, yeah, I might have said that.
25 He did. Is that an apology or is that a provocation?

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1 stepping it up?

2 Is that Drew Torrence drawing closer to murder, but
3 that is for you to decide, ladies and gentlemen.

4 He leans over to the African-American nurse, who told
5 you she heard him say something about do you know what
6 menses is to Donna, and he said it in a way to make her
7 think that he was asking her -- pardon me for saying this
8 -- are you on the rag; are you PMSing; what's your prob-
9 lem?

10 Donna said, I know what it is, and her body language
11 was, leave me alone.

12 Is that apologizing to everybody the bar? Do you
13 believe that?

14 You give it the weight you think it deserves.

15 Zach Chaplin didn't think it was. Zach Chaplin was
16 standing up for his friends, and he stands up and says,
17 enough, stop it, don't say it again.

18 But Drew Torrence did, because he wasn't going to
19 let Zach win. He tried to call him names but that wasn't
20 enough to get a rise out of him. He has met a man who
21 was coursing with cocaine and amphetamines in his system.

22 So he insulted Lee, his friend, and it went on, not
23 just one time but several. Did Zach do anything then?

24 No.

25 He insulted Donna. Did Zach do anything then?

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1 But at some point enough is enough. Nobody likes a
2 drunk. Nobody likes people to be obnoxious, and at some
3 point somebody is going to stand up to them, and that's
4 what Zach did.

5 He told him to stop, but Drew Torrence wasn't going
6 to let anybody tell him what to do, and he said it again.

7 The video shows Zach getting up and punching him,
8 and Zach got hit -- no question about that.

9 Did anybody at the bar get up and call nine one one
10 at that point? Say, hey -- you know because people prob-
11 ably thought he got what he deserved.

12 But what does Lee do? Lee is not a fighter and Lee
13 was insulted, but he got up and got between them and he
14 tried to separate them.

15 He told you that, and Mr. Torrence in looking at the
16 video said he noticed that.

17 He got up and tried to separate them, and he did
18 separate them.

19 Mr. Torrence is driving. His body is driving toward
20 Zach, trying to get to him. He's trying to fight back.

21 If you notice one frame in the video, you're going
22 to see him reaching up for his throat, going for his eyes,
23 maybe even trying to throw a punch.

24 But he's too drunk to fight. Ten beers in three and
25 a half hours, and he told you he was drunk and everybody

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1 else did too.

2 Maybe on any other day he could have taken Zach, but
3 not on that day.

4 So he lost again. Zach put him in his place. He
5 showed him you can't be drunk, you can't be obnoxious and
6 you can't insult my friends.

7 Lee Buchanan helps him pick up his glasses from the
8 floor and pats him on the backs, tells him to go on home
9 now.

10 Then they go back, and nobody is celebrating on the
11 tape. Nobody is saying, good for us; hey, we got Drew
12 Torrence.

13 And what does Drew Torrence do? Well, we know he
14 talked about malice, but you don't have to have the in-
15 tent to kill when you come back in the bar, and that is
16 not what the Judge is going to tell you.

17 That's not what malice is. Malice can mean hatred
18 or ill will to another person, which clearly he had to-
19 ward Zach Chaplin.

20 He said, I should get my gun and shoot him, and he
21 is saying rude and obnoxious things to Lee and everybody
22 else around him.

23 But it does not of necessity import ill will toward
24 the person injured. It just signifies a general malig-
25 nant recklessness to the lives and the safety of others.

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1 Bringing a gun into a bar when you've been drinking?
2 Does that sound reckless? If it's not, I don't know what
3 is.

4 Or a condition of the mind and heart, regardless of
5 social duty, and fatally bent on mischief.

6 I'm going to get my gun, and I'm going to be the
7 man.

8 You are not going to win, Zach Chaplin. I am going
9 to win. You are either going to back down from me and
10 run, but if you come at me I'm going to put you down.
11 That's malice.

12 He said he was going to do it and, lo and behold, he
13 did.

14 He goes out and he gets his gun, and he tells you he
15 called nine one one on the cel phone. 'Ken Robison, his
16 former boss, and his boss that night, said he told me he
17 called West Columbia nine one one because I asked him who
18 he called.

19 He said he called WCPD, the West Columbia Police De-
20 partment nine one one. Well, what do we know about that?
21 The West Columbia Police Department, -- the dispatcher who
22 took the call that morning came and told you, I got three
23 phone calls. You heard that.

24 The only call that came in was from the Grog Shop
25 which is a part of Sonny's business -- Shaggy's in the
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1 back with the bar -- I mean, with the liquor store in the
2 front and a restaurant on the side, I believe.

3 You couldn't say what was said. The dispatcher has
4 not said that's a hangup and you should call back. The
5 second call is on the video, and if you look on the video
6 you're going to see the phone light up on the bar. It
7 rings six times. That's why all the ringing is going
8 on.

9 Drew Torrence is trying to figure out, what am I
10 going to say; I just killed this man, what am I going to
11 say?

12 So he picks up the phone and the second call you
13 hear is Drew Torrence talking. The third phone is Orlando
14 Boyd who really didn't want to get involved, but he is
15 here today. He testified in front of you all.

16 He goes down to the gas station to -- he goes to
17 call nine one one. He's talking about rounds popping
18 off. There are no other nine one one calls to the West
19 Columbia Police Department.

20 She told you she didn't get any, and Johnny Dollar
21 -- he was the first person who testified -- he had the
22 records and he said he was the custodian of the records.

23 I think he told you he looked an hour before and an
24 hour after, and there were no hang-up calls. There were
25 no calls by Drew Torrence. There was no call about

1 Shaggy's, no calls about an assault -- nothing but the
2 three phone calls you heard.

3 But if you think Drew Torrence called nine one one,
4 called to ask for help, you can give it whatever weight
5 you think it deserves.

6 He said he called nine one one and he waited --
7 he waited -- and that was four minutes and forty-two sec-
8 onds before he went back in.

9 What is Drew Torrence doing that time? Is he
10 getting in his car and driving to the police station to
11 make a report? No.

12 In Cross Examination he told you, I know I could
13 file a report and go get a warrant. He could have done
14 that. He could have left, but he chose not to.

15 He chose, if you want to believe him, to detain some-
16 body. Is that true, or was that Drew Torrence trying
17 to give himself a reason for going back inside that bar,
18 to escalate the situation?

19 He goes back in the bar with a gun, and people are
20 leaving -- he said he didn't see anybody leave. He could
21 have stayed out there forever to wait for the West Columbia
22 Police Department to come.

23 In fact, he could have flagged down a car and said,
24 would you call nine one one? I need to stay here and see
25 what's going on.

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1 He never told you that he saw anybody try to leave
2 there. He never said he saw Zach try to leave. He never
3 said he saw Lee Buchanan try to leave.

4 He's drunk, he's obnoxious, he's mad, he's upset
5 about being beat up and embarrassed. So what's he think-
6 ing?

7 What he's thinking is what he said earlier. I'm
8 going to get my gun and shoot them. By God, I'm at the
9 place where I can get my gun and go back in now.

10 He knows it's against the law to go in a bar with a
11 gun, because he said that too. Now he wants to use cit-
12 izen's arrest for a reason for him to go back in.

13 Did he provoke the fight, did he want all of this
14 to happen? I don't know, but it did happen, and he chose
15 to take the consequences of that and the benefit of that,
16 take advantage of it.

17 He wants you all to think he was going to make a
18 citizen's arrest. Do you think that's what a citizen's
19 arrest means? That a drunk man can go in a bar and pro-
20 voke a fight, get beat up; go outside and wait four and a
21 half minutes; come back in with a gun and provoke a
22 shooting? If so, then let him go.

23 But that is not what a citizen's arrest is for. You
24 think about what a citizen's arrest is for, and the Judge
25 is going to tell you what the law is.

1 A citizen's arrest is for when you see a police offi-
2 cer and there is a struggle over his gun or someone takes
3 a police officer's gun and you want to do something about
4 it. I hope somebody does something about it.

5 It is when a bank robber comes out from a bank with
6 an alarm going off with a gun in his hand and money, and
7 somebody is screaming, he just robbed the bank. That's
8 for citizen's arrest.

9 But if you think the law in South Carolina -- if
10 that's what you want a citizens arrest to be, including
11 all the circumstances -- if that's what you think a
12 citizen's arrest is, if you can use a citizen's arrest
13 to settle a personal score, then Drew Torrence is not
14 guilty.

15 What is he doing while he's out in his car? He has
16 said he was just waiting. Why didn't he just wait? He
17 did not have to go back in. He didn't have to go back
18 in.

19 And he talked about what he had in the car and what
20 he chose not to bring back in. He said he had handcuffs
21 in his car. The best way to detain somebody is with hand-
22 cuffs.

23 But he didn't bring them in, and he chose not to, as
24 it wasn't really about detaining anybody. It was provok-
25 ing, it was about escalating, it was about being the man

1 and taking a step closer to murder, if he needed to.

2 What else could he have taken in? He said he had
3 pepper spray in the car. If somebody charges you, you
4 can spray them and that's a way to take them down.

5 That wasn't enough for Drew Torrence, and he told
6 you that. He also talked about an Asp baton -- this is
7 an Asp baton.

8 It is an offensive and a defensive weapon, as you
9 heard Agent West from SLED testify to. You can use it to
10 kick out peoples' knees, arms; use it to defend yourself
11 and take people down.

12 Drew Torrence had one of these in his car, he told
13 you. He didn't take it in. He didn't want to. It was
14 not enough.

15 He could have put on that duty belt that had all these
16 things on there. It had his handcuffs, his pepper spray,
17 his Asp baton, and I think he said a Sig, which is another
18 firearm that he said he wore at Rush's, although the Rush's
19 manager or his former boss told you Rush's is an unarmed
20 position.

21 But that's what he told you he had that night, and
22 that is all in the car ready to be put on, and instead
23 he gets out his Glock, because is he really going in to
24 detain someone, or is he going in to provoke the situa-
25 tion?

1 Agent West and Mr. Torrence both told you that a gun
2 escalates a situation. It doesn't defuse the situation.

3 A man who goes in to provoke a fight with a gun out
4 is escalating the situation because it's not about deten-
5 tion. It's not about citizen's arrest. It's about being
6 a man.

7 You beat me up, you embarrassed me, and you're not
8 going to do it.

9 If you don't think there is malice and you want to
10 go down to voluntary manslaughter -- Judge McMahon will
11 tell you the law on that -- one of the things has to do
12 with a cooling off period.

13 You have to be enraged, you have to be in the heat
14 of passion on sufficient legal provocation. He will ex-
15 plain all of that to you.

16 So what is he mad about? Is he mad and enraged
17 because of getting beat up? And nobody is going to deny
18 that Mr. Torrence got pummeled, he got punched twelve
19 times -- no question about that.

20 But his injuries were all superficial too, and you
21 heard that from their own witness, Dr. Schwab, from the
22 E.R.

23 He was there thirty minutes, they cleaned him up and
24 put sterile strips on it and let him go.

25 So is he enraged about that? Is that what his

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1 provocation is, because if you want to accept that theory
2 then he's got four minutes and forty-two seconds that he
3 is outside, thinking about what he's going to do.

4 The Judge is going to tell you about a cooling off
5 period. If that's what he's enraged about, then he goes
6 out and he has time to think, to deliberate, and if it
7 comes to him say I'm going to call nine one one, whether
8 he did or not; I'm going to choose to get my warrant, as
9 opposed to getting my handcuffs, my Zig, my Asp, my pepper
10 spray -- thinking about what he's going to do.

11 To go back in -- which door am I going to go back
12 in? How am I going to do this when I come in?

13 If you think that he's still enraged because of that
14 then I guess it's voluntary manslaughter.

15 But if you think that's why he's enraged and that
16 is the legal provocation, four minutes and forty-two sec-
17 onds is a long time to cool down.

18 As you cool down and you're being deliberate, then
19 it goes back to malice. Because the truth is, he gets
20 what he wants.

21 He says, I ought to get my gun and shoot him, and
22 now he's doing that. He is one step closer to murder.

23 He goes back into the bar with a gun. He pounds on
24 the door. Donna testified she said, don't open the door,
25 but Lee Did.

1 I know that's a decision he'll regret the rest of his
2 life, but at that point Mr. Torrence comes in, and you
3 have all seen the video.

4 Both Donna and Lee tell you that he pointed a gun
5 at Lee. You go through the video, each frame on that
6 video, which you'll have back in your jury room, and you
7 look and see if you can see a gun when Mr. Torrence is
8 coming in. That will be up to you.

9 Everybody in the bar scatters, and why wouldn't they,
10 because a drunk man who just got beat up is back in with
11 a gun.

12 Jennifer, the bartender, is hiding under the bar, and
13 Lee is trapped over in the corner. Zach runs and you will
14 see him take a female and push her out the door.

15 Then you'll see his head disappear for a second and
16 he comes back in.

17 You will see Donna go toward the door, and I think
18 she testified she was on the wrong side and she was hit-
19 ting the inside as opposed to the door side to get out.
20 She couldn't get out so she ran and got under a pool
21 table.

22 At that point, Drew Torrence is still provoking the
23 situation.

24 He got Zach to run so he thinks he's won at this
25 point. Now he's got Lee here, and he thinks I can't leave

1 anybody who is a threat; I've got a gun; I've got to know
2 what's going on.

3 Maybe he was detaining them, but is that really --
4 was he really detaining, or was it really provoking?

5 Do you want to let somebody use a citizen's arrest
6 to provoke people, to do things they couldn't otherwise
7 do? Use it as an excuse to manipulate the law? That
8 is a question for you to decide.

9 You see Zach -- you see him looking over the bar.
10 At this moment, Donna is trapped under the pool table,
11 Lee is over against the bar hiding. His friends were
12 trapped inside.

13 I'm going to stop for a second. There were some
14 things that Drew Torrence told you. He knew it was wrong
15 to take a gun into a bar. He knew that guns and alcohol
16 don't mix.

17 He knew that if you take a gun out, you'd better
18 be prepared to use it, and he was.

19 He knew that if you're going to claim citizen's
20 arrest, you had better be right.

21 He knew all of those things when he came in, and he
22 admitted to that, but he chose to come in with a gun to a
23 bar, which he knew was wrong.

24 He chose to display a gun when he was drunk, which
25 he knew was wrong.

1 At what point are you going to say, the circumstances
2 don't allow you to claim citizens' arrest under these cir-
3 cumstances?

4 He told you why he went in and why he took a gun, if
5 nothing else. He told you why he didn't take an Asp baton,
6 why he didn't take handcuffs, because of psychological
7 control -- his words -- of a loaded firearm. Not an un-
8 loaded firearm -- he came with a loaded firearm, so he
9 could use it if he needed to.

10 He's going to win. Either Zach is going to run away
11 and I'm the winner, or if he comes at me I'm going to put
12 him down and I'm going to claim citizen's arrest or claim
13 self-defense.

14 They won't prosecute me, and I got away with murder.

15 Ladies and gentlemen, it's your decision. Do not let
16 him do that, do not let him get away with murder.

17 Murder is the unlawful killing with malice afore-
18 thought. You have to decide whether it's a lawful or an
19 unlawful killing.

20 If it's self-defense, then it's not unlawful, and
21 Mr. Torrence goes home.

22 This is self-defense. There are four things you must
23 find in order for you to say Mr. Torrence acted in self-
24 defense.

25 Is there a killing? No question that he killed Zach

1 Chaplin. He told you from the stand that Mr. Chaplin
2 would be alive if he hadn't shot him.

3 The Defendant was without fault in bringing on the
4 difficulty. I'm not sure of Mr. Torrence's definition of
5 bringing on the difficulty, but I would tell you this.

6 He was drunk, he was obnoxious, he was rude, he was
7 crude, he was offensive to everybody in that bar.

8 He was at fault. He provoked a fight. He was told
9 to be quiet, which you can't tell Drew Torrence what to
10 do, so he got beat up. And he tried to fight back but
11 he got beat up.

12 He got put out of the bar, and if he would have left
13 right there Zach Chaplin probably would have been arrested
14 for assault and battery. He would have gone to the po-
15 lice department and filed a report, and we all wouldn't
16 be sitting here today.

17 So what does he do to bring on the difficulty. He
18 goes out to his car, drunk, and he gets his gun, and he
19 comes back in, to escalate a situation which is what it
20 is when you bring a gun into a bar.

21 A drunk man who has just been beat up comes back
22 with a gun -- my gosh, what is everybody thinking that's
23 in there?

24 He comes in, points the gun at people, and there is
25 testimony as to that. Is that not bringing on the

1 difficulty?

2 If it is, you don't even need go any further, and
3 self-defense doesn't apply.

4 The Defendant must have actually been in danger of los-
5 ing his life or sustaining serious bodily injury where he
6 was. You all have seen the video so you have the advant-
7 age of that.

8 Why did he tell you he felt he was in danger of los-
9 ing his life? First, he said maybe Zach had a gun or
10 had a knife. I didn't know what he had.

11 But that's not good enough. He never said, I saw
12 a gun. He never said, I saw a knife. The police didn't
13 find a gun or a knife on Zach. If they had, you would
14 have heard about it.

15 So why was he in imminent danger of losing his life
16 or sustaining serious bodily injury? He told you it was
17 because if he took my gun from me then he would shoot
18 me and kill me.

19 Ladies and gentlemen, who brought the gun? Who brought
20 the gun?

21 Drew Torrence chose to bring that gun, and he has
22 talked about his having a gun, but if you think that sat-
23 isfies that element, that he was in danger, in imminent
24 danger when he brought the gun that was the cause of the
25 danger, then you give it whatever weight you think that

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1 it deserves.

2 He wants to tell you that he was in danger of losing
3 his life or of sustaining serious bodily injury. He wants
4 to tell you that he was trapped over in the corner of the
5 bar, and you see the area. You've got the diagram and
6 there are some photographs of it, but he put himself there.

7 He chose to come back in with a gun and to put him-
8 self there, detaining Lee -- put your hands on the bar
9 and don't move. This has nothing to do with you.

10 You heard Lee say that. I could be wrong, but I
11 think Mr. Torrence said I might have said that, so if it
12 doesn't have anything to do with Lee, the only other per-
13 son it has to do with his coming back in for is Zach, be-
14 cause Drew Torrence can't be beat. He is going to be the
15 man, so he comes back in with a gun, knowing that he's
16 drunk, to prove to everybody and himself that you can't
17 push him around.

18 Then he's taken another step closer to murder, and
19 if you want to say it was all okay up to that point, that
20 he was trapped in a corner when the gunshot was first shot,
21 you give that whatever weight you want to give it, what-
22 ever weight you think it deserves.

23 But you look at the video. Agent West talked to
24 you about percussions, a firearm being fired. Look at
25 what is coming from the ceiling and think about the

1 percussion and disturbing the dust and the lint and the
2 insulation, and see if you can figure out when the shots
3 occurred.

4 If the first shot -- if Mr. Torrence is pointing at
5 Zach and he's like this, and the first shot is in the arm,
6 you are going to see the gunpointed in that position.

7 The first shot is in the arm, and you're going to
8 see the gun pointed in an upright position on the video.
9 When the gun is fired, almost immediately after, you are
10 going to see stuff fall from the ceiling.

11 You are going to watch Mr. Torrence's body rotate
12 and turn. Is it a quick time period? It is, but it is
13 not like taking one shot at somebody -- pow, pow.

14 There is time to fire and turn, and notice where his
15 hands are. Down and lower, because that's where Zach
16 Chaplin is. He's falling down on the ground from the
17 shit.

18 The first shot fractured his arm. Look at the angle
19 of the gun. Look at the dust coming from the ceiling,
20 and in the second shot look at the recoil of the arm when
21 it was fired, and Agent West talked to you about it.

22 If you're not holding it rigid, you're going to see
23 it bounce back. You look and see what you can see.

24 The pathologist told you that the second shot went
25 in behind the mastoid bone so it didn't hit the bone but

1 below the bone here, and it crossed down the spine, and
2 that's the shot that paralyzed him.

3 That's why you know it's the second shot. Zach
4 Chaplin is down on the ground. We know that bullets fire
5 in a straight line. The gun barrel goes down, comes in,
6 come around.

7 You all figure what the angle was, and you all fig-
8 ure out where Zach Chaplin was.

9 But how much time is there between the first shot and
10 the second?

11 If you don't think there was malice with the first
12 shot, and you don't think he provoked that situation,
13 think about the second shot.

14 At that point, if this is the corner and he's
15 trapped when he fires the first shot, then he turns and
16 he lowers it and he fires a second shot. Who is behind
17 him now?

18 All he had to do was back up. He's not in fear of
19 his life at that moment, but he chose to fire a second
20 shot, because he had malice.

21 He had malice from the moment he said he was going
22 to shoot him all the way through to the time he pulled
23 the second trigger.

24 Does the video show Drew Torrence offering help to
25 Mr. Chaplin after the shooting?

1 Donna said he went over and he said, are you going
2 to get up now, and you can see him on the video walking
3 over.

4 Does he take off his shirt? Does he apply first aid
5 like he's taught? He told us he had training while in
6 the Marines and training for CPR in gunshot wounds speci-
7 fically for the Marines.

8 He told his friend, Daniel Cameron, that I took off
9 my shirt and I applied pressure, but the video shows that
10 didn't happen.

11 So ask yourself why Drew would say that? Why did he
12 need to make it look better than the truth?

13 Because the truth is he went in with malice that had
14 been building up over the night, and he ended up with what
15 he said he was going to do -- I'm going to get my gun and
16 shoot him, and he made that situation happen.

17 But he wanted his friend, Mr. Cameron, to believe he
18 was making a citizen's arrest; that was self-defense, and
19 I took my shirt off and put pressure on it.

20 This is his shirt. Look at the front of it, and you
21 look for the blood.

22 Mr. Floyd wants you to believe that Zach Chaplin was
23 hopped up on cocaine and amphetamines, and the toxicology
24 report that he showed showed that he had those drugs in
25 his system.

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1 But if you look in the medical records, some eighteen
2 hundred and some odd pages that are on a disc -- if you go
3 to page 61 of that you will see that Drew -- I'm sorry --
4 that Zach told them that he had used cocaine the day be-
5 fore the shooting.

6 So he didn't -- did he have cocaine in his system?
7 The doctor said that cocaine can stay in your system for
8 up to seventy-two hours.

9 Yeah, you may test positive for it, but does it really
10 mean that it's making you do things? Does it really mean
11 it's making you mad, that it's making you act other than
12 deliberate.

13 You give that whatever worth you think it's worth.
14 If you think that is a reason for letting Drew Torrence
15 go, find him not guilty.

16 Mr. Floyd wants to talk to you about reasonable
17 doubt, and I wish that I could give you every piece of
18 evidence you want. I wish we could go into peoples'
19 minds and you could read their minds, but all we can do
20 is interpret their actions.

21 If I show you a picture and there's a piece missing,
22 do you really have any reasonable doubt as to what that
23 is?

24 You still know what the pictures is whether that is
25 there or not.

1 Yeah, there is always going to be some doubt. There
2 is always going to be the question you wish you had an
3 answer to. The question becomes, is there a reasonable
4 doubt?

5 Drew Torrence is guilty of murder. He's not guilty
6 of voluntary manslaughter. He's not guilty of assault
7 and battery with intent to kill because the shooting was
8 the proximate cause.

9 Dr. Ross told you the second shot severed his spine
10 and was the cause of his death. Just because he didn't
11 bleed from the gunshot wounds to death doesn't mean that
12 it was not the proximate cause.

13 That's what the Judge will tell you. As Dr. Ross
14 said, he would be alive but for being in the hospital
15 after getting these wounds, and if you don't think that
16 is not the proximate cause then give it whatever weight
17 you think it's worth.

18 The last charge of assault and battery of a high and
19 aggravated nature -- that means he didn't have malice and
20 that is not the cause of death.

21 Ladies and gentlemen, if you don't believe that is
22 all this case boils down to -- this is Drew Torrence's
23 gun, the gun that he fired two rounds to kill Zach
24 Chaplin.

25 If you believe he is only guilty of assault and

1 battery of a high and aggravated nature, then find him
2 not guilty and let him have his gun back.

3 MR. FLOYD: Your Honor, I object to that. That is
4 improper.

5 THE COURT: Ladies and gentlemen of the jury, I'd
6 sustain that objection.

7 You may continue, Mr. Solicitor.

8 SOLICITOR: Thank you, Your Honor. The Judge will
9 tell you the rights a citizen has to resist an unlawful
10 or illegal arrest.

11 He will tell you that Zach Chaplin had a right to
12 do that. So if you believe there was a citizen's arrest
13 attempt to be made, and that it was illegal and was for
14 Zach, Zach can resist. He can charge to protect himself,
15 and the Judge will tell you that.

16 Zach Chaplin was a hero. He gave his life for his
17 friends in the bar.

18 Donna was trapped, Lee was trapped, Jennifer was
19 trapped. Zach could have left, but he went back in be-
20 cause he is a hero.

21 Don't let a hero die in vain. Make Drew
22 Torrence responsible for what he did. Hold him account-
23 able for provoking a fight, for being drunk, being obnox-
24 ious, for choosing to go out and get a gun; for not doing
25 anything else but continue to escalate the situation.

1 As he told you it did , when you bring a gun into a
2 bar. Make him responsible for what he did, tell him that
3 he had malice, tell him he is guilty of murder.

4 Thank you.

5 THE COURT: Thank you, Solicitor.

6 If you would move this board here, Solicitor?

7 All right, Mr. Foreman and ladies and gentlemen of
8 the jury, my charge is lengthy. It's about forty pages,
9 and my timing, I believe, is about one minute per page.

10 My Court Reporter thinks my timing is about one hour
11 per page, but it is about one minute per page, so it will
12 take forty or forty-five minutes to charge the jury.

13 Your lunch is here, so what I am going to do is break
14 and allow you all to eat your lunch.

15 Go to your jury room, and as soon as you have fin-
16 ished eating knock on the door and alert the bailiff. At
17 that time, we will reassemble out here, get started back.

18 If you need forty-five minutes, that's fine -- an
19 hour is fine. If any of you want to step outside and get
20 some air or anything of that nature you may certainly do
21 so.

22 Do not discuss the case among yourselves during the
23 recess. As I say, I'm not going to say an hour or hour
24 and a half. Just let me know when you are ready to re-
25 assemble and we will start back again.

1 Leave your notes upside down in the chair. Do not
2 discuss the case during this brief recess. Thank you very
3 much.

4 Please go with your bailiff.

5 (Jury excused from the Courtroom for the lunch re-
6 cess)

7 THE COURT: All right, do you have a matter, Mr.
8 Floyd?

9 MR. FLOYD: Your Honor, it would be an objection to
10 the Prosecution's closing argument, and, of course, to the
11 argument he made about the weapon.

12 I didn't want to make a legal argument in front of
13 the jury at the time, Your Honor, so I just stated an ob-
14 jection.

15 We would move that the charges be dismissed against
16 Andrew Torrence because of the improper argument that
17 was made by the Solicitor in regard to returning the gun.

18 I mean, you can't tell the jury to let him go and
19 give him his weapon back.

20 In the first place, Mr. Torrence is not going to
21 get his weapon back, and it also is something that has
22 nothing to do with whether or not he is guilty of this
23 offense or innocent.

24 He's telling them go let him go and give him his
25 weapon back so he can go shoot somebody else, which

1 is a totally improper argument.

2 Further, Your Honor, during his closing argument
3 there was open and loud weeping by the family members
4 of the victim, which was improper, we think.

5 THE COURT: Thank you, Mr. Floyd.

6 Solicitor?

7 SOLICITOR: Your Honor, my argument -- if it was im-
8 proper I apologize. I have used that argument before and
9 did not know it would cause a problem.

10 THE COURT: Thank you.

11 SOLICITOR: If I am wrong, I guess I would ask for
12 a curative instruction, Your Honor.

13 Thank you very much.

14 THE COURT: All right. Well, I think the argument may
15 have originally been argued in State versus South. I
16 don't know if that's the case you are referring to.

17 Under some more recent cases, State versus Reese,
18 for example, the ruling was not on that argument but it
19 was on the whole argument.

20 I think the ruling was that the Solicitor's argument
21 in its totality was improper. You argued about forty-five
22 minutes and that was the only objection, and it was the
23 only reference to that issue.

24 I do not think it interjects into the trial any
25 factor that would cause the Defendant not to receive a

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1 fair trial by a fair and impartial jury.

2 Taking the entire argument of the Solicitor into ac-
3 count, I do not think it was delivered in the sense as to
4 inflame the passions or prejudices of the jury against
5 the Defendant.

6 I will give a charge to the jury in that regard that
7 they cannot make their decision, make their verdicts, based
8 on passion, emotion or any consideration not connected to
9 the case.

10 I also didn't hear any weeping or crying on the part
11 of the family. Now, that being said, it is not any -- I
12 did not notice it, but I would deny your motion to dismiss
13 the case based on the prosecutor's closing argument, and
14 I would deny your motion to dismiss based on crying, not
15 just because I didn't hear it, but I certainly believe
16 you, Mr. Floyd.

17 I will certainly give an instruction in that regard
18 and would certainly give a curative instruction if you
19 desire one.

20 MR. FLOYD: We would request a curative instruction,
21 Your Honor.

22 THE COURT: Thank you very much. We'll be in recess,
23 but don't go too far so that we can re-assemble when the
24 jury is ready.

25 Thank you.

1 (Whereupon, the Court stood in recess for the lunch
2 break and the matter thereafter resumed)

3 THE COURT: All right, bring us our jury, please.

4 (Jury returned to the Courtroom)

5 THE COURT: All right. Welcome back, ladies and
6 gentlemen.

7 Please give me your complete and undivided attention.
8 I'm now going to charge or instruct you on the law that
9 you would use to apply to the facts of the case as you
10 find the facts to be.

11 The procedure that I follow is I give the general
12 group of laws in South Carolina that applies to all crim-
13 inal cases that we try. Thereafter, I cover the charges
14 in the Indictments, starting with murder and the lesser
15 included offense of voluntary manslaughter.

16 Then, based upon your finding or lack of finding of
17 probable cause of death, I will then cover assault and
18 battery with intent to kill and the lesser included of-
19 fense of assault and battery of a high and aggravated na-
20 ture.

21 Thereafter, I will cover the law on self-defense,
22 the law on citizen's arrest, and, finally, I will cover
23 the forms of the verdicts in this case.

24 I ask that you give me your complete and undivided
25 attention.

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1 The Indictments charge the Defendant with murder,
2 the possession of a weapon during the commission of a
3 violent crime, and carrying a pistol or firearm onto pre-
4 mises that sell alcoholic liquors, beers or wines for on-
5 premises consumption.

6 I would remind you that the fact that the Defendant
7 was arrested and charged and indicted in this case is not
8 evidence and cannot be considered by you as evidence of
9 guilt, nor may it create any presumption of the Defen-
10 dant's guilt.

11 These documents or these Indictments are simply the
12 formal documents or formal written instruments that convey
13 the charges made against the Defendant.

14 These are the formal documents by which this case is
15 brought into Court.

16 The Indictments in the case contain several differ-
17 ent offenses against the Defendant. The charges as to In-
18 dictment One is murder; as to Indictment Two, possession
19 of a weapon during the commission of a violent crime; and
20 as to Indictment Three, carrying a pistol or firearm onto
21 premises or business selling alcoholic liquors, beers or
22 wines for on-premises consumption.

23 Each Indictment charges a separate and distinct of-
24 fense, and you must decide each Indictment only on the
25 evidence and the law that applies to it, uninfluenced by

1 your decision as to the other Indictments.

2 The Defendant may be convicted or acquitted on any
3 or all of the offenses charged. You will be asked to
4 write a separate verdict of guilty or not guilty for each
5 Indictment.

6 Presumption of Innocence.

7 The Defendant has pled not guilty to these Indict-
8 ments, and that places the burden on the State to prove
9 the Defendant guilty.

10 A person charged with committing a criminal offense
11 in South Carolina is never required to prove himself inno-
12 cent.

13 I charge you that it is an important rule of law
14 that a defendant in a criminal case, no matter what the
15 seriousness of the charge may be, will always be presumed
16 to be innocent of the crime for which the Indictment was
17 issued unless guilt has been proven by evidence satisfy-
18 ing you of that guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberations but it accompanies the Defendant
21 throughout the trial until you reach a verdict of guilt
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is like a robe of right-
25 eousness placed about the shoulders of the Defendant which

1 remains with the Defendant until it has been stripped
2 from the Defendant by evidence that satisfies you of the
3 Defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not a mere legal
5 theory. It is not just a legal phrase. It is a substan-
6 tial right to which every defendant is entitled unless
7 you, the jury, are satisfied from the evidence of the De-
8 fendant's guilt beyond a reasonable doubt.

9 Reasonable Doubt.

10 What is a reasonable doubt in the law? A reasonable
11 doubt is the kind of doubt which would cause a reasonable
12 person to hesitate to act.

13 The State has the burden of proving the Defendant's
14 guilt beyond a reasonable doubt.

15 Some of you in the past may have served as jurors
16 in civil cases where you were told it was only necessary
17 to prove that a fact is more likely true than not true,
18 such as by the greater weight or the preponderance -- the
19 preponderance of the evidence.

20 In criminal cases such as this, the State's proof
21 must be more powerful than that. It must be -- must
22 be beyond a reasonable doubt.

23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the Defendant's guilt. There are
25 very few things in the world that we know with absolute

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1 certainty, and in a criminal case the law does not re-
2 quire proof beyond every possible doubt, but if based on
3 your consideration of the evidence you are firmly con-
4 vinced that the Defendant is guilty of the charge, you
5 must find the Defendant guilty.

6 If, on the other hand, you feel there is a real pos-
7 sibility that the Defendant is not guilty, you must give
8 the Defendant the benefit of the doubt and find him not
9 guilty.

10 I remind you that during this trial you and I have
11 certain duties to perform. It is the Trial Judge's re-
12 sponsibility to preside over the trial of this case, and
13 I also have the duty to rule upon the admissibility of
14 the evidence offered during the trial.

15 You are to consider only the competent evidence be-
16 fore you. If there was testimony ordered stricken from
17 the record in this case or during this trial, you must
18 disregard that testimony.

19 You are to consider only the testimony which has
20 been presented to you from the witness stand and any ex-
21 hibits which have been made a part of the record in the
22 case, and any stipulations of counsel.

23 It is my additional duty to charge you the law as it
24 applies to this case. As the Presiding Judge, I am the
25 sole judge of the law in this case, and it is your duty

1 as jurors to accept and apply the law as I now state it
2 to you.

3 If you already have any ideas as to what the law is,
4 or what the law ought to be, and if it does not agree
5 with what I now tell you the law is, you must abandon
6 your ideas because you are sworn, you have taken an oath,
7 to accept the law and apply the law exactly as I state
8 it to you.

9 In every case tried in this Courtroom before a trial
10 jury, the jury becomes the sole and exclusive judges of
11 the facts in the case.

12 A trial judge cannot make statements, comment on, or
13 make any reference to a trial jury about the facts in a
14 case. Since you, the jury, are the judges of the facts
15 in this case, you are not to infer what I may have said
16 during the progress of this trial in ruling upon the ad-
17 missibility of evidence or otherwise, or anything that I
18 say now during these instructions to you, that I have any
19 opinion about the facts in the case.

20 The law does not allow me to have any opinion as
21 about the facts of this case. That is a matter solely
22 for you, the jury, to determine.

23 As jurors, it is your duty to determine the effect,
24 the value, the weight and the truth of the evidence pre-
25 sented during the trial.

1 Direct and Circumstantial Evidence.

2 There are two types of evidence which are generally
3 presented during a trial, direct evidence and circumstan-
4 tial evidence.

5 Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact, such as an eye-
7 witness or an ear-witness, or any evidence which imme-
8 diately establishes the main fact to be proven.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances which indicate the existence of a fact.
11 It is evidence which immediately establishes collateral
12 facts, from which the main fact may be inferred.

13 Circumstantial evidence is based on inference and
14 not on personal knowledge or observation.

15 The law -- our law makes absolutely no distinction
16 between the weight or the value to be given to either di-
17 rect or circumstantial evidence, nor is there a greater
18 degree of certainty required for circumstantial evidence
19 than of direct evidence.

20 You should weigh all of the evidence in the case
21 and, after weighing all of the evidence, you are not con-
22 vinced of the guilt of the Defendant beyond a reasonable
23 doubt then you must find the Defendant not guilty.

24 Credibility of Witnesses.

25 Necessarily, you must determine the believability,

1 the credibility, of witnesses who have testified in this
2 case.

3 Credibility simply means believability. It is your
4 duty as jurors to analyze and evaluate the evidence, and
5 to determine which evidence convinces you of its truth.

6 In determining the believability of witnesses who
7 have testified in this case, you may believe one witness
8 over several or several over one. You may believe a part
9 of the testimony of a witness and reject the remainder of
10 the testimony of that same witness.

11 You may believe the testimony of a witness in its
12 entirety or reject the testimony of a witness in its en-
13 tirety.

14 You may consider whether any witness has exhibited
15 any interest, any bias or prejudice in this case, and you
16 may also consider the appearance or the manner of a wit-
17 ness while testifying on the witness stand.

18 Expert Witnesses.

19 The rules of evidence ordinarily do not permit wit-
20 nesses to testify to opinions or conclusions. An excep-
21 tion to this rule is as to witnesses that we call expert
22 witnesses.

23 A witness who by education or experience is an ex-
24 pert in some art or profession or calling may state an
25 opinion as to relevant and material matter in which the

1 witness claims to be an expert, and may also state the
2 reasons for that opinion, for holding that opinion.

3 You should consider any expert opinion received in
4 evidence in this case like any other evidence. You are
5 to give it such weight as you think it deserves.

6 If you decide the opinion of an expert witness is
7 not based on sufficient education and experience, or if
8 you conclude that the reasons given in support of the
9 opinion are not sound, or that the opinion is outweighed
10 by other evidence, you may disregard the opinion.

11 An expert witness' testimony is to be given no
12 greater weight as that of other witnesses simply because
13 the witness is an expert.

14 Further, you are not required to accept an expert's
15 opinion even though it is not contradicted.

16 Intent.

17 In order to establish criminal liability, criminal
18 intent is required.

19 For example, the mental state required to be proven
20 by the State for a particular crime might be purpose or
21 intent or knowledge or recklessness or criminal negli-
22 gence.

23 Criminal intent must be proven by the State beyond
24 a reasonable doubt. Criminal intent is always a matter
25 that must be determined by the jury from the circumstances

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1 surrounding the situation.

2 Now, there is no way to prove intent with mathemati-
3 cal certainty. There is no way that medical science can
4 dissect a person's brain to determine what the person had
5 in mind, so the law, our law, says that criminal intent
6 may be inferred from the circumstances shown to have
7 existed, and this is how you make your determination of
8 whether or not the element requiring intent is present.

9 It is not necessary to establish intent by direct
10 and positive evidence, but intent may be established by
11 inference in the same way as any other fact, by taking
12 into consideration the acts of the parties and all of the
13 facts and circumstances of the case.

14 Criminal intent is a mental state, a conscious wrong
15 doing. It is up to you, the jury, to determine what the
16 Defendant intended to do based on the circumstances shown
17 to have existed.

18 Criminal intent can arise from actions or a failure
19 to act. It may arise from negligence or recklessness
20 to duty, or consequences considered by the law to be the
21 equivalent of criminal intent.

22 Statement of the Defendant.

23 A statement alleged to have been made by the Defen-
24 dant has been admitted into evidence in this case. While
25 this Court has determined that the statement could be

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1 admitted into evidence, I instruct you that you make the
2 ultimate decision as to whether or not the Defendant made
3 the statement.

4 If a Defendant did make the statement, you must de-
5 termine whether the statement was made by the Defendant
6 voluntarily of his own free will and accord.

7 This means that the statement was not caused by
8 pressure, force, fear or threats, or coercion or intima-
9 tion, or by any promise of leniency or reward of any kind.

10 In deciding whether a statement was voluntary, you
11 should consider both the characteristics of a Defendant
12 and the details of the statement.

13 The State has the burden of proving beyond a reason-
14 able doubt that the alleged statement was voluntary. If
15 you determine it was, you may give the statement any fur-
16 ther consideration that you deem proper.

17 You must decide what weight, if any, should be given
18 to the alleged statement. If you determine that the al-
19 leged statement was not the free and voluntary statement
20 of the Defendant, you are not to consider the statement
21 at all.

22 Prior Record; Limitation for Impeachment.

23 You have heard evidence that the Defendant was con-
24 victed of a crime other than the one for which the
25 Defendant is now on trial.

1 This evidence may be considered by you, if you con-
2 clude it is true only, in deciding whether the Defendant's
3 testimony is believable, and for no other purpose.

4 It may only be considered for the purpose of credi-
5 bility. You must not consider the Defendant's prior re-
6 cord as any evidence of the Defendant's guilt on those
7 charges which we are trying today.

8 That is the general criminal law, and I am now going
9 to begin with the Indictments, each particular Indictment.

10 I will start with the Indictment for murder again,
11 including the lesser offense of voluntary manslaughter,
12 and after I explain proximate cause I will further cover
13 the offenses of assault and battery with intent to kill
14 and assault and battery of a high and aggravated nature.

15 The Defendant is charged with murder. The State
16 must prove beyond a reasonable doubt that the Defendant
17 killed another person with malice aforethought.

18 The term malice is hatred, ill will, hostility to-
19 wards another person. It is the intentional doing of a
20 wrongful act without just cause or excuse, and with an
21 intent to inflict an injury or under circumstances from
22 which the law could infer fatal intent.

23 Malice aforethought does not require that malice
24 exist for any particular time before the act is committed
25 but malice must exist in the mind of the Defendant just

1 before and at the time that the act was committed.

2 Therefore, there must be a combination of the pre-
3 vious evil intent and the act.

4 Malice aforethought may be express or inferred. Now,
5 these terms express or inferred do not mean different
6 kinds of malice, but merely the manner in which malice
7 may be shown to exist; that is, either by direct evidence
8 or by inference from the facts and circumstances which
9 are proven, express or inferred.

10 Express malice is shown when a person speaks words,
11 expresses hatred or ill will for another, or when the
12 person prepares beforehand to do the act which was later
13 accomplished.

14 For example, lying in wait for a person, or any other
15 act or preparation going to show that the deed was in the
16 Defendant's mind, would be express malice.

17 Malice may be inferred from conduct showing a total
18 disregard for human life.

19 Proximate cause.

20 When a person inflicts a fatal injury on another
21 person, and that other person dies at a later time, you
22 must be convinced beyond a reasonable doubt that the inflic-
23 tion of the first injury was the proximate cause of the
24 victim's death.

25 Proximate cause is the direct cause, the immediate

1 cause. It is the efficient cause. It is that cause with-
2 out which the death of the victim would not have resulted.
3 There must be a chain of causation from the time of the
4 injury inflicted by the Defendant until the time of his
5 death.

6 Proximate cause does not necessarily mean that it
7 occurred immediately prior to death. There may be more
8 than one proximate cause. The acts of two or more per-
9 sons may combine together to be a proximate cause.

10 It is not a defense to show that the victim might
11 have recovered had he been treated according to the most
12 prudent medical standards or as a reasonably prudent doc-
13 tor may have treated him, or even by showing treatment
14 negligence.

15 Now, ladies and gentlemen, in the charge of murder
16 is included the lesser included offense of voluntary man-
17 slaughter.

18 So if you find that the State has failed to prove
19 beyond a reasonable doubt that the Defendant committed
20 murder, you may consider whether the State has proved be-
21 yond a reasonable doubt that the Defendant committed vol-
22 untary manslaughter.

23 Included within the offense of murder is the lesser
24 offense of voluntary manslaughter.

25 To prove voluntary manslaughter, the State must

1 prove beyond a reasonable doubt that the Defendant took
2 the life of another in the sudden heat of passion, based
3 on sufficient legal provocation.

4 Both heat of passion and sufficient legal provoca-
5 tion must be present at the time of the killing to con-
6 stitute voluntary manslaughter.

7 Sudden heat of passion may for a time affect a per-
8 son's self-control. It may temporarily disturb a per-
9 son's reason.

10 The sudden heat of passion must be of the type that
11 would make an ordinary person unable to cool and reflect
12 on his actions, and would produce an uncontrollable im-
13 pulse to do violence.

14 Sufficient legal provocation must be the type that
15 would make a person of ordinary reason and caution become
16 enraged and to lose control temporarily.

17 The provocation leading to voluntary manslaughter
18 must come from some act of or related to the victim.

19 Words alone, however vulgar or insulting, are not
20 enough to be legal provocation.

21 The exercise of a legal right, no matter how offen-
22 sive it is to another, is never sufficient legal provoca-
23 tion for voluntary manslaughter.

24 If the heat of passion has cooled or if there was
25 enough time between the provocation, if any, and the

1 killing for the passion of a reasonable person to
2 cool, it would not be voluntary manslaughter; the kill-
3 ing would not be voluntary manslaughter.

4 In deciding whether a reasonable person has had
5 enough time to cool off, you would consider all of the
6 surrounding circumstances in the killing.

7 You may consider the nature of the provocation, if
8 any, the Defendant's mental and physical state, and the
9 circumstances of the relationship between the parties.

10 That is the charge of murder and the lesser included
11 offense of voluntary manslaughter.

12 Again, ladies and gentlemen, if you find that the
13 death of the victim was not proximately caused by the in-
14 jury inflicted by the Defendant to the victim, you would
15 then consider assault and battery with intent to kill or
16 the lesser included offense of assault and battery of a
17 high and aggravated nature.

18 In order to prove assault and battery with intent to
19 kill the State must prove beyond a reasonable doubt that
20 the Defendant committed an unlawful act of a violent na-
21 ture to the person of another with malice aforethought.

22 An assault occurs when a person unlawfully at-
23 tempts or offers to commit a violent injury upon another
24 person and has the present ability to complete the at-
25 tempted injury.

1 An assault is the intentional creation of a reason-
2 able fear of immediate bodily harm. It is not necessary
3 that the attempted injury or the attempted harm actually
4 take place. This is the definition of an assault.

5 If I walk up to you to within an arm's reach of you
6 and I draw back to hit you, then that is an assault.

7 A battery is the unlawful touching of another by a
8 person who has committed an assault. The unlawful touch-
9 ing can be caused by a part of the accused's body or by
10 any object the accused may put in motion.

11 The battery is the completion of the assault by the
12 using of or apply force to another person, however slight,
13 in a rude, angry or resentful manner, without legal justi-
14 fication for doing so.

15 Using my earlier example to you, if I carry through
16 with the assault by hitting you, then that is the battery.

17 Malice, as I said before under the charge of mur-
18 der, is hatred, ill will or hostility toward another. It
19 is the intentional doing of a wrongful act without just cause
20 and excuse, and with an intent to inflict injury or under
21 circumstances that the law would infer an evil intent.

22 Again, malice aforethought does not require the mal-
23 ice to exist for any particular time before the act is
24 committed.

25 Malice must exist in the mind of the Defendant just

1 before and at the time the act is committed.

2 Therefore, there must be that combination of the
3 previous evil intent and the act.

4 For assault and battery with intent to kill, again
5 malice aforethought may be express or inferred.

6 A specific intent to kill is not enough for assault
7 and battery with intent to kill. There must be a general
8 intent to commit serious bodily injury. Intent means in-
9 tending the result which actually occurred, not accidental
10 or involuntary.

11 Intent may be shown by acts and conduct of the Defen-
12 dant under the circumstances, from which you may naturally
13 and reasonably infer intent.

14 Evidence of the character of the assault, the char-
15 acter of the instrument used, the manner in which it was
16 used, the purpose to be accomplished, and the resulting
17 wounds or injuries may be considered in determining the
18 intent with which the assault was committed.

19 Intent may be inferred when it is demonstrated that
20 the Defendant voluntarily and wilfully commits an act,
21 the natural tendency of which is to destroy another's
22 life.

23 Again, under the law that the greater encompasses
24 the lesser included offense, if you find that the State
25 has not proven the Defendant guilty of assault and

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1 battery with intent to kill, you must then determine whe-
2 ther the State has proved the Defendant guilty of assault
3 and battery of a high and aggravated nature.

4 Assault and battery of a high and aggravated nature
5 includes all of the elements of assault and battery with
6 intent to kill except malice aforethought.

7 In addition, the State must prove beyond a reason-
8 able doubt the circumstances of aggravation.

9 Circumstances of aggravation include but are not lim-
10 ited to the following:

11 The use of a deadly weapon.

12 The intent to commit a felony.

13 The infliction of serious bodily injury.

14 A great disparity in the ages or physical conditions
15 of the parties.

16 The purposeful infliction of shame and disgrace.

17 The resistance of lawful authority.

18 These are only examples of circumstances of aggrava-
19 tion.

20 That is the charge, ladies and gentlemen, on murder
21 and the lesser included offense of voluntary manslaughter.

22 Also, if you do not find the State has proved beyond
23 a reasonable doubt the injuries inflicted proximately were
24 the cause of death of the victim, you would consider as-
25 sault and battery with intent to kill and the lesser

1 included offense of assault and battery of a high and
2 aggravated nature.

3 As to all of these charges, the law of self-defense
4 may apply. I will now charge you the law of self-
5 defense.

6 The Defendant has raised the defense of self-de-
7 fense. Self-defense is a complete defense, and if it is
8 established you must find the Defendant not guilty.

9 The State has the burden of disproving self-defense
10 by proof beyond a reasonable doubt. If you have a rea-
11 sonable doubt as to the Defendant's guilt, after consid-
12 ering all the evidence, including the evidence of self-
13 defense, then you must find the Defendant not guilty.

14 On the other hand, if you have no reasonable doubt
15 as to the Defendant's guilt after considering all the evi-
16 dence, including the evidence of self-defense, then you
17 would find the Defendant guilty.

18 The following elements are required to establish
19 self-defense.

20 First, without fault -- the Defendant must be with-
21 out fault in bringing on the difficulty.

22 If the Defendant's conduct was the type which was
23 reasonably calculated to and did provoke a deadly assault,
24 the Defendant would be at fault in bringing on the diffi-
25 culty.

1 He would not be entitled to an acquittal based on
2 self-defense.

3 Contemptuous Language.

4 Self-defense is not available to a person who uses
5 language which is so contemptuous that a reasonable per-
6 son would expect it to bring on a physical encounter and
7 which can actually be a trigger to the physical encounter.

8 Second, Imminent Danger.

9 The second element of self-defense is that the De-
10 fendant was actually in imminent danger or death or ser-
11 ious bodily injury, or that the Defendant actually believed
12 he was in reasonable danger of death or serious bodily
13 injury.

14 If the Defendant was actually in imminent danger, it
15 must be shown that the circumstances would have warranted
16 a person of ordinary firmness and courage to strike the
17 fatal blow to prevent death or seriously bodily injury.

18 If the Defendant believed he was in imminent danger
19 of death or serious bodily injury, it must be shown that
20 a reasonable, prudent person, a person of ordinary firm-
21 ness and courage, would have had the same belief.

22 In deciding whether the Defendant actually was or
23 believed he was in imminent danger of death or serious
24 bodily injury, you should consider all the facts and cir-
25 cumstances surrounding the event, including the physical

1 condition and characteristics of the Defendant and of the
2 victim.

3 Right to Act on Appearance.

4 The Defendant does not have to show that he was act-
5 ually in danger. It is enough if the Defendant believed
6 he was in imminent danger, and that a reasonable and pru-
7 dent person of ordinary firmness and courage would have
8 the same belief.

9 The Defendant has the right to act on appearances,
10 even though the Defendant's belief may have been mistaken.

11 It is for you to decide whether the Defendant's fear
12 of being in danger of death or serious bodily injury was
13 reasonable, and that it would have been felt by an ordi-
14 nary person in the same situation.

15 Prior Difficulties.

16 Evidence of prior difficulties between the Defendant
17 and the victim may be considered in deciding whether the
18 threat existed and whether the Defendant had a reason to
19 believe a threat existed and how serious that threat was.

20 Size and Age.

21 The relative size, age and weight of a Defendant and
22 the victim may be considered in deciding the apparent or
23 actual need for force in self-defense, and the amount of
24 force needed.

25 Prior Knowledge About a Victim.

1 Prior instances of violence by a victim may be con-
2 sidered in deciding whether the Defendant actually believed
3 he was in imminent danger of death or serious bodily in-
4 jury or whether he was actually in imminent danger.

5 Intoxication.

6 The intoxication of the parties may be considered
7 whether the Defendant's fear of death or bodily harm was
8 real.

9 No Other Way to Avoid Danger.

10 The final element of self-defense is that the Defen-
11 dant had no other way to avoid the danger of death or of
12 serious bodily injury than to act as the Defendant did in
13 this particular case.

14 In Great Risk of Harm.

15 The Defendant had no means of retreat if by doing so
16 the danger of being killed or suffering serious bodily in-
17 jury would increase.

18 Defense of Third Person.

19 The law recognizes the right of every person to de-
20 fend himself or to defend a friend or relative from death
21 or serious bodily harm at the hands of another.

22 In doing so, a person may use such force as is rea-
23 sonably necessary, even to the extent of taking the life
24 of the assailant.

25 Degree of Force.

1 A person cannot be required to make an exact calcu-
2 lation as to the degree or amount of force that may be
3 needed to avoid death or serious bodily harm.

4 Therefore, in self-defense, the Defendant has a right
5 to use the force needed to avoid death or serious bodily
6 harm. The force used in self-defense does not have to be
7 limited to the degree or the amount of force used by the
8 victim.

9 The Defendant has a right to use so much force as
10 would appear to be necessary for complete self-protection,
11 and which a person of ordinary reason and firmness would
12 have believed to be necessary to prevent death or serious
13 bodily injury.

14 Continuing Until Threat of Harm is Ended.

15 If the Defendant is justified in defending himself or
16 others and in firing the first shot, then the Defendant
17 is also justified in continuing to shoot until it is ap-
18 parent that the danger of death or serious bodily injury
19 has completely ended.

20 Now, ladies and gentlemen, as to self-defense being
21 a complete defense, that is the law which applies to this
22 case.

23 I have referred to the Defendant primarily. However,
24 parts of that charge may in fact apply to the victim in
25 this case, as far as defense of a third person or the

1 defense of others.

2 So you need to consider all of the totality of the
3 facts and circumstances in determining whether or not
4 the element of self-defense or the element of the defense
5 of others would apply to the parties in this particular
6 case.

7 Ladies and gentlemen, I assure you that the end is
8 in sight, and you need to continue to give me your un-
9 divided attention before I go to the weapons charges in
10 the case.

11 I'm going to charge you the law in South Carolina
12 as well on citizen's arrest, being the right that a citi-
13 zen may have in making an arrest, a citizen's arrest.

14 There are statutes in South Carolina which address
15 that issue in Title 17 13 10 and Title 17 13 20.

16 Upon, A, a view of a felony committed, or, B, cer-
17 tain information that a felony has been committed, or,
18 C, a view of a larceny committed, any person may arrest
19 the felon and take him to a judge or magistrate to be
20 dealt with according to the law.

21 A citizen's arrest is unlawful unless a felony has
22 been committed, or if no felony has been committed.

23 Under 17 13 20, a citizen may arrest a person in the
24 nighttime by efficient means if the darkness and the prob-
25 ability of escape render it necessary, even if the life

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1 of the person may be taken if the person has committed
2 -- when the person has committed a felony.

3 In order to invoke the defense of a justifiable kill-
4 ing, it must be shown that the felony has been committed
5 and that the shooter used reasonable means to effect the
6 arrest.

7 The determination of reasonable means depends upon
8 the totality of the facts and circumstances in the case,
9 even if -- even if it is later found that the person at-
10 tempting to make a citizen's arrest, or the person that
11 the arrestor is attempting to arrest did not commit a
12 felony.

13 The arrest would still be lawful if there was reason-
14 able cause for suspicion.

15 That is the law on citizen's arrest in South
16 Carolina, and I am now going to cover the law on posses-
17 sion of a weapon during the commission of a violent crime.

18 There is a statute in South Carolina, 16 23 490.

19 When a Defendant is charged with possession of a
20 weapon during the commission of or attempt to commit a
21 violent crime, the State must prove beyond a reasonable
22 doubt that the Defendant was in possession of a firearm
23 visibly displayed, or what appeared to be a firearm, dur-
24 ing the commission of a violent crime.

25 A firearm means a machine gun, revolver, pistol or

1 any weapon which will, is designed to or may be readily
2 converted to expell a projectile.

3 In order to find a Defendant guilty of possession
4 of a weapon during the commission of a violent crime, you
5 must first find the Defendant guilty of either committing
6 or attempting to commit a violent crime.

7 I charge you that murder, voluntary manslaughter,
8 and/or assault and battery with intent to kill are vio-
9 lent crimes.

10 Assault and battery of a high and aggravated nature
11 is not classified in South Carolina as a violent crime.

12 The Defendant is also charged with carrying a pis-
13 tol or a firearm onto a business selling alcoholic liquor,
14 beer or wine, for on-premises consumption.

15 It is unlawful for a person to carry a pistol or a
16 firearm into a business which sells alcohol liquor, beer
17 or wine for on-premises consumption, or consumption on
18 the premises.

19 That is the charge in that regard to the Indictments
20 which the Defendant has been indicted for.

21 Finally, ladies and gentlemen, I will cover the
22 forms of the verdict in this particular case.

23 Once again, ladies and gentlemen, you cannot allow
24 yourselves to be governed by sympathy or prejudice or
25 passion or emotion or any other arbitrary factors that

1 are not in evidence in this particular case.

2 Both the State and the Defendant have a right to ex-
3 pect that each of you will carefully and impartially con-
4 sider all the evidence in this case, and that you will
5 follow the law as I have explained it to you.

6 Mr. Foreman, ladies and gentlemen, you will have all
7 the items of evidence that have been introduced during
8 the course of the trial in the jury room with you, and,
9 additionally, you will have the verdict form.

10 I think that it is self-explanatory, but I will go
11 over it very briefly with you here in the Courtroom, with
12 the Indictment numbers and the lesser included offenses.

13 I will begin with the charge in Indictment 2010 GS
14 32 2318, which is for murder.

15 You have three choices as to the crime of murder, Mr.
16 Foreman, and the order in which I have them listed on the
17 paper has no significance whatsoever, as one must be
18 listed first.

19 It states, we, the jury, by unanimous consent, find
20 the Defendant guilty of murder, guilty of voluntary man-
21 slaughter, or not guilty.

22 If, after your deliberations and your view of the
23 evidence you determine that the State has proven to you
24 its case beyond a reasonable doubt as to murder, proven
25 each and every element of murder beyond a reasonable

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1 doubt, you would reach a unanimous verdict of guilty of
2 murder.

3 So then, Mr. Foreman, if you would check to the
4 left of guilty of murder, circle the check mark by those
5 three words, guilty of murder.

6 If, after your deliberations and your view of the
7 evidence you determine that the State has not met its
8 burden of proof in the case beyond a reasonable doubt as
9 to murder, but has met its burden of proof beyond a rea-
10 sonable doubt as to the crime of voluntary manslaughter,
11 by unanimous consent, I would ask you to check to the left
12 of the form by guilty of voluntary manslaughter, and to
13 circle the check mark and those words, those four words.

14 If you find based upon your view of the facts that
15 the State has failed to prove its case as to murder, and
16 has failed to prove its case as to voluntary manslaughter,
17 you would find the Defendant not guilty, and check to the
18 left and circle those two words, not guilty.

19 Now, if that decision is based on proximate cause,
20 and it is your view of the facts that the State has failed
21 to prove that the death of the victim was proximately
22 caused from the injuries inflicted by the Defendant upon
23 the victim, you would consider the second, we, the jury,
24 by unanimous consent, find that the Defendant's actions
25 were not the proximate cause of the death of the victim,

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1 then, by unanimous consent, you would find the Defendant
2 not guilty of assault and battery with intent to kill,
3 or guilty of assault and battery of a high and aggravated
4 nature, or not guilty, again based upon your view of the
5 evidence, your determination of the evidence. That must
6 be unanimous.

7 Now, during your deliberations on murder and the
8 lesser included offense of voluntary manslaughter, you
9 would take into account those charges as to criminal in-
10 tent, my instruction as to self-defense, my instructions
11 as to citizen's arrest, and all the general instructions
12 as I have given you on the criminal law in South Carolina.

13 Those instructions would also apply to assault and
14 battery with intent to kill and to assault and battery of
15 a high and aggravated nature.

16 If you find the Defendant guilty of assault and bat-
17 tery of a high and aggravated nature or voluntary manslaugh-
18 ter, or murder, those are violent crimes, and under In-
19 dictment Number 2011 GS 32 01440, possession of a weapon
20 during the commission of a violent crime, and the State
21 has proven all the elements of that, you have the option
22 to find the Defendant guilty or not guilty.

23 Again, on the carrying of a pistol on the premises of
24 a business which has on-premises consumption of liquor,
25 beer or wines, you would find the Defendant guilty or not

1 guilty. You would check what is your verdict, and then
2 you would circle the check and those words, and then
3 sign and date it.

4 Ladies and gentlemen, your verdict must be the unani-
5 mous verdict of all of you. When the jury has agreed upon
6 your verdict and you have filled out the form, Mr. Fore-
7 man, please sign and date it.

8 You would then knock on the jury room door and then
9 inform the Bailiff that you have reached a verdict. At
10 that time, we will receive you back into the Courtroom.

11 Momentarily, I want to ask you to go to your jury
12 room. The law requires that I must speak one final time
13 with the attorneys outside of your presence. I'm not sure
14 how long that will go on, four minutes or four hours or
15 four days, but we do have to cover something.

16 I will allow you to take your notes this time with
17 you but do not begin your deliberations until you are told
18 to do so by the Clerk or the Bailiff.

19 If you have any questions, Mr. Foreman, during the
20 course of your deliberations, please write me out a note,
21 knock on the jury room door, and your fine Bailiff will
22 bring that to my attention.

23 Also, the attorneys have informed me that they will
24 have equipment available for you to use to view the video-
25 tapes which were introduced into evidence. I understand

1 Mr. West will be available to operate that equipment for
2 your viewing, if that becomes necessary.

3 With that being said, if you would now go with your
4 Bailiff to your jury room.

5 (Jury excused from Courtroom)

6 THE COURT: All right, Solicitor.

7 SOLICITOR: Your Honor, I did not hear the right to
8 resist an illegal arrest.

9 THE COURT: All right. I'll look at that.

10 Anything further?

11 SOLICITOR: No, sir.

12 THE COURT: It was all paper-clipped together as I
13 read it.

14 Mr. Floyd?

15 MR. FLOYD: Of course, Your Honor, we object to it,
16 to any emphasis being placed on it.

17 THE COURT: I'll be glad to recharge self-defense. I
18 will just recharge all of self-defense, all the law on that.

19 MR. FLOYD: Your Honor, we object to your failure to
20 charge involuntary manslaughter.

21 THE COURT: Anything else?

22 MR. FLOYD: No, sir.

23 THE COURT: All right.

24 SOLICITOR: Your Honor, another thing, and I know it
25 was just a matter of speech, but I believe Mr. West will

1 show them how to work it and not operate it for them.

2 THE COURT: Well, when I said that, I wasn't sure
3 what you all had agreed on, although I know he would not
4 be allowed to be in the jury room.

5 SOLICITOR: I think what he told me he would try to
6 do was try to type up directions on how to do it but he
7 would be available if need be.

8 THE COURT: All right. He could show them how to
9 play it, I guess.

10 SOLICITOR: And, Your Honor, we need to go through
11 the evidence.

12 THE COURT: Yes, sir.

13 Bring the jury, please.

14 (Jury returned to Courtroom)

15 THE COURT: All right. Ladies and gentlemen, please
16 give me your undivided attention. I do not think this
17 will take very long.

18 I am going to review with you again my charge on
19 citizen's arrest.

20 Upon, A, a view of a felony committed, or, B, cer-
21 tain information that a felony has been committed, or,
22 C, a view of a larceny committed, any person may arrest
23 a felon and take him to a judge or magistrate to be dealt
24 with according to the law.

25 Under South Carolina Code 17 13 10.

1 A citizen's arrest is unlawful unless a felony has
2 been committed.

3 Under Section 17 13 20, the citizen may arrest
4 a person in the nighttime by efficient means if the dark-
5 ness and the probability of escape render it necessary,
6 even if the life of the person may be taken when the per-
7 son has committed a felony.

8 In order to invoke the defense of a justifiable kill-
9 ing under these circumstances, it must be shown that a
10 felony has been committed and that the person attempting
11 to make the arrest used reasonable means to affect the
12 arrest.

13 The determination of reasonableness depends upon the
14 totality of all of the facts and circumstances in the
15 case.

16 A citizen is not required to submit to an illegal
17 arrest and may use as much force as is reasonably neces-
18 sary to prevent an unlawful arrest.

19 Under the law, a person has a right to resist an
20 unlawful arrest by force if such be necessary. In so
21 doing, he may use such force as is apparently necessary
22 to regain his liberty if such be necessary.

23 To justify the use of force in resisting an arrest,
24 it is not necessary that a person show he had no opportu-
25 nity to retreat or escape. He may stand on his right and

1 use such force as may be apparently necessary to repel
2 an unlawful arrest or detention or interference with his
3 person, provided such force is reasonable in degree and
4 kind, even if it is later found the person attempting to
5 make the arrest against the person they are attempting to
6 arrest did not commit a felony.

7 The arrest would still be lawful if there was reason-
8 able cause for suspicion that the felony was committed.

9 That is the charge on citizen's arrest.

10 I may have mis-spoke one time in my charge as to
11 possession of a firearm during the commission of a vio-
12 lent crime.

13 I would restate that murder is a violent crime, vol-
14 untary manslaughter is a violent crime, and assault and
15 battery with intent to kill is a violent crime.

16 Assault and battery of a high and aggravated nature
17 is not classified as a violent crime in South Carolina.

18 You may recall or may not recall during the course
19 of the trial I gave you certain instructions concerning
20 firearms and ammunition. You will have the weapon in
21 there with you with the gunlock or cable lock.

22 Mr. Foreman, if you wish the ammunition, knock on
23 the door and let the bailiff know. The gun will come out
24 and the ammunition will come in.

25 They will not be in there together at any time.

1 Mr. Foreman and ladies and gentlemen of the jury, on
2 my form of the verdict I changed it a little bit. It is
3 still very similar to what I explained.

4 You have the indictment number as to murder on the
5 left, and it will be, we, the jury, by unanimous consent,
6 find the Defendant either guilty of murder, guilty of
7 voluntary manslaughter, guilty of assault and battery
8 with intent to kill, guilty of assault and battery of a
9 high and aggravated nature, or not guilty.

10 That will be the various potential verdicts listed
11 under that particular indictment.

12 Finally, ladies and gentlemen, I had mentioned to
13 you that Agent West would set up the video, but what he
14 has done is type out a list of instructions.

15 The first instruction is find the most, quote, tech,
16 unquote, interested person to operate. That is on the
17 explanation, and as you go through I believe you all will
18 be able to manage this.

19 Should you not be able to, please let me know. I
20 assure you by letting me know you will not have found the
21 most tech interested person, but I will make that person
22 available for you.

23 That person may not be in your jury room during your
24 deliberations, and maybe I'll get in trouble while I'm
25 saying this, but you will have the instructions with you.

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1 All right. Again go to your jury room and do not
2 begin your deliberations until you are instructed to do
3 so.
4 Thank you very much.
5 (Jury excused from Courtroom)
6 THE COURT: All right, any exceptions, Solicitor?
7 SOLICITOR: No, Your Honor.
8 THE COURT: Mr. Floyd?
9 MR. FLOYD: No, Your Honor.
10 THE COURT: All right. If you all would check the
11 evidence, please. Have you all checked the evidence?
12 SOLICITOR: Yes, sir.
13 THE COURT: Mr. Floyd?
14 MR. FLOYD: Yes, Your Honor.
15 THE COURT: And have you checked the instructions
16 of Mr. West?
17 MR. FLOYD: I haven't, but I'm sure there is no prob-
18 lem with it.
19 THE COURT: Then I'm going to bring the Alternates
20 out and request they be sequestered in separate jury rooms.
21 Then we will await the jury verdict.
22 MR. FLOYD: Thank you, Your Honor.
23 (Whereupon, the alternates were removed from the
24 jury room and sequestered, and the jury panel was taken
25 the evidence and requested to commence with their

1 deliberations.)

2 (Whereupon, the Court stood at ease awaiting the
3 jury's verdict)

4 (The matter was thereafter resumed)

5 THE COURT: They want the charge. I don't have any
6 objection to it as long as you all consent.

7 MR. FLOYD: We would have no problem with it.

8 SOLICITOR: Do you want us to make another copy?

9 THE COURT: If you could do that. I write on mine
10 and I'm going to have to clean it up a little bit.

11 It will take me a while.

12 SOLICITOR: We can get a copy of it. That's okay.
13 Judge.

14 THE COURT: We'll send it on back.

15 (Another recess taken while waiting on the jury, and
16 the matter was resumed)

17 THE COURT: Before I bring in our jury, I want to re-
18 mind all of the spectators in the Courtroom that many
19 times the taking of the verdict can be a very emotional
20 point in the trial for one side or the other, or for both
21 sides.

22 I do not condone, nor do I tolerate, any outbursts
23 or any show of emotion in any manner. If you feel you
24 cannot control your emotions, I will ask you to please
25 leave at this time because I will direct the Sheriff to

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1 take any individual into custody that shows any display
2 of emotion that I consider to be inappropriate. Afterward,
3 we will have a hearing to determine whether or not they will
4 be held in contempt.

5 Again, if you feel you cannot contain your emotion
6 I would ask you to leave at this time.

7 All right, please bring us our jury.

8 (Jury returned to Courtroom at 6:45 P.M.)

9 THE COURT: All right, Mr. Foreman, have you reached
10 your verdict?

11 FOREMAN: We have.

12 THE COURT: Please pass it up by the Baliff.

13 (Verdict exhibited to the Court)

14 THE COURT: All right. The verdict form appears to
15 be in proper form and is signed by our Foreperson, dated
16 with today's date.

17 Madam Clerk, you may publish the verdict, please.

18 CLERK: Yes, sir. Indictment Number 2010 GS 32 2318,
19 The State versus Andrew Torrence, Junior, as to murder,
20 by unanimous consent, find the Defendant guilty of volun-
21 tary manslaughter.

22 Indictment Number 2011 GS 32 01440, as to possession
23 of a weapon during a violent crime, we, the jury, by unan-
24 imous consent, find the Defendant guilty.

25 Indictment Number 2011 GS 32 011444, as to

1 unlawful carrying of a pistol or firearm onto premises of
2 business selling alcohol liquors, beers or wines for on-
3 premises consumption, we, the jury, by unanimous consent,
4 find the Defendant guilty.

5 And it is signed by the Foreperson, dated June 3, 2011.

6 Mr. Foreman, ladies and gentlemen of the jury, if these
7 are your verdicts, please indicate, each of you, by rais-
8 ing your hand, please.

9 All jurors have so indicated.

10 THE COURT: Thank you very much, Madam Clerk.

11 The alternates have rejoined their fellow jurors, as
12 they were sequestered in a separate room during the delib-
13 erations in this case.

14 Is there anything further for the Jury from the
15 State?

16 SOLICITOR: No, Your Honor.

17 THE COURT: From the Defendant?

18 MR. FLOYD: I would request polling.

19 THE COURT: Thank you very much, Mr. Floyd.

20 Madam Clerk, if you would explain that procedure to
21 the jury and then poll them.

22 CLERK: Yes, sir, Your Honor.

23 As I call your name, if you'll hold up your hand so
24 I can recognize you, please.

25 I will ask you a two-prong question as to the verdicts.

1 Were these your verdicts and are they still your verdicts.
2 If you will please respond at that time.

3 THE COURT: Your response, of course, is either yes or no.

4 (Whereupon, the jurors were polled individually, as
5 each juror answered in the affirmative as to both questions
6 by the Clerk.)

7 CLERK: The jury has been polled, Your Honor.

8 THE COURT: Thank you, Madam Clerk.

9 Is there anything further from the jury for the De-
10 fense, Mr. Floyd?

11 MR. FLOYD: Not for the jury, Your Honor.

12 THE COURT: Thank you very much, Mr. Floyd.

13 All right, ladies and gentlemen, momentarily I will
14 release you from your jury service for whatever little
15 bit of the week it makes.

16 Thank you very much for your service this week and
17 your duty. It has been my please and privilege to be with
18 you this week.

19 You are disqualified from jury service for the re-
20 mainder of this year as far as the State Circuit Court
21 of Record.

22 You would have an additional two year exemption for
23 2012 and 2013.

24 Should you be recalled for jury duty and you wish
25 to exercise that exemption, you can certainly do so for

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1 the State Circuit Court of record.

2 Momentarily, I'm going to hear from the De-
3 fense and thereafter I will impose sentence on Mr.
4 Torrence. You may remain for that proceeding if you
5 choose to do so.

6 However, you may be excused if you choose to leave.
7 Thank you very much.

8 Mr. Foreman, I do need you to meet momentarily with
9 the Clerk of Court to conform the verdicts on the In-
10 dictments themselves, with consent.

11 Again, it has been my pleasure and privilege to be
12 with you this week.

13 Also, ladies who were Alternates in this case, thank
14 you very much as well for your service this week. I real-
15 ize you were not part of the deliberations. However, I
16 did require you all to remain and appreciate your service
17 very much also.

18 (Whereupon, the jury was excused by the Court)

19 THE COURT: All right, Mr. Floyd.

20 MR. FLOYD: Thank you, Your Honor. If I could put
21 something on the record first?

22 My time may be off on this, but at approximately
23 4:40 P.M. the jury sent out a question to the Court as to
24 whether or not they could consider the crime of involun-
25 tary manslaughter.

1 We were in your Chambers when the question was ad-
2 dressed.

3 At that time, we requested that Your Honor charge
4 them on the crime of involuntary manslaughter since they
5 seemed to be considering that by their request.

6 Your Honor, the concern that I have with it is that
7 there is no question that the jury gave indication that
8 they were kind of stuck in a box.

9 It appears from the question, at least to me, that
10 they did not feel that the -- that there was proximate
11 cause between the incident and the death and that's why
12 they did want to go down below some type of manslaughter.

13 That they felt that this was not a case of voluntary
14 manslaughter and that they felt involuntary manslaughter
15 would be an appropriate charge. Of course, when they did
16 not have that option, then their only option was to find
17 he was not guilty or go back up to the voluntary man-
18 slaughter charge.

19 For this reason, we would move for a new trial in the
20 matter.

21 In addition, Your Honor, we would renew all motions
22 that were made at the conclusion of the State's case, at
23 the conclusion of the entire case. We would renew all of
24 those motions and respectfully request that the Court con-
25 sider those motions.

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1 We would, of course, renew our objections to the
2 Court's refusal to charge involuntary manslaughter, which
3 we requested in our charge conference.

4 For all these reasons, we would move that the ver-
5 dict be set aside and that Mr. Torrence be granted a new
6 trial.

7 THE COURT: Thank you very much, Mr. Floyd.

8 I received two notes from the jury. One when they
9 first went out, requesting a copy of the charge, which
10 I did send in.

11 I sent it in with the consent of the Solicitor and
12 you.

13 MR. FLOYD: That's correct.

14 THE COURT: I have the note and will have it marked
15 a Court's Exhibit, Court's Exhibit 1.

16 REPORTER: Yes, sir.

17 THE COURT: The other note that I received -- and I
18 do not question the time at all. I wasn't clock-watching
19 at the time.

20 The note reads, is there a possible charge of invol-
21 untary manslaughter, end quote, and my response, as I in-
22 dicated to you and the Solicitor was going to be, and it
23 was: No, involuntary manslaughter is not an issue before
24 the jury, and signed by myself.

25 I will have this marked as Court's Exhibit Number 2.

1 Again, I would note that there is evidence upon which
2 the charge of voluntary manslaughter would be appropriate
3 in this case. I do not think the Defendant was acting
4 lawfully, and his testimony was such that he intentionally
5 fired the weapon twice.

6 His position was that it was in self-defense. It may
7 have been that the jury found that it was not the appro-
8 priate thing, that it was discharged in sudden heat of
9 passion with sufficient legal provocation.

10 The real issue was in my opinion the issue of reason-
11 ableness of the total thing. I think the verdict was
12 appropriate, and I would deny your motion.

13 I do not think the facts support a charge of invol-
14 untary manslaughter. I am sure you are protected on the
15 record in that regard.

16 I would deny pre-trial motions as to the previous
17 issues that have been brought to the attention of the
18 Court.

19 Any other motions, Mr. Floyd?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: All right, any reason, Mr. Floyd, that
22 sentence should not be imposed at this time?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Thank you. Come around, please, Mr.
25 Torrence.

1 (Defendant coming before the Court with counsel)

2 THE COURT: Anything further, Mr. Floyd?

3 MR. FLOYD: Nothing further.

4 THE COURT: Anything further from the State before
5 sentencing, Solicitor?

6 SOLICITOR: Your Honor, we do have some -- we have
7 two persons who wish to be heard.

8 THE COURT: All right, I'll be glad to hear from them.

9 SOLICITOR: As far as his prior record, as has al-
10 ready come out, Your Honor, he has a prior conviction in
11 2005 for trespassing, and then as Your Honor is aware he
12 has the conviction for assault, second, for assaulting
13 and breaking a correctional officer's nose. That inci-
14 dent date was June 26, 2010. He pled to in front of Your
15 Honor this year.

16 THE COURT: Thank you, Solicitor.

17 SOLICITOR: Your Honor, this is Catherine Chaplin,
18 the mother of Mr. Chaplin.

19 THE COURT: All right, Mrs. Chaplin. Is that cor-
20 rect, maam?

21 MRS. CHAPLIN: Yes, sir.

22 THE COURT: Mrs. Chaplin, I'll be glad to hear from
23 you.

24 MRS. CHAPLIN: I tried many years to become a parent,
25 and on September 11, 1977, Zachariah Chaplin made me a

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1 mother. He was my parents' first grandchild and my sib-
2 lings were thrilled to become aunts and uncles.

3 Zach blessed me with two beautiful grandchildren, and
4 the smile on his face whenever he was with them was brighter
5 than the sun.

6 As a child at bedtime, I sang to him his favorite lull-
7 aby, You Are My Sunshine, and even as an adult he would
8 still ask me to sing it again.

9 At the funeral, I had my final fifteen minutes with
10 my Zach and thanked God. I talked to him and I sang, You
11 Are My Sunshine.

12 For the last time I kissed his cheek, and I left my
13 baby in the hands of God, as a result of the choice the
14 Defendant made.

15 I respectfully request that he be punished to the
16 fullest extent of the law.

17 Thank you.

18 THE COURT: Thank you, Mrs. Chaplin.

19 Do you have another witness, Solicitor?

20 SOLICITOR: Yes, sir.

21 THE COURT: I'll be glad to hear from her.

22 SOLICITOR: I believe Ms. Muszynski would like to ad-
23 dress the Court also.

24 THE COURT: Yes, maam.

25 SISTER: Thank you. Twenty years before this terrible

1 event, I was kidnapped and assaulted by a convicted rap-
2 ist. At my attacker's sentencing, I chose not to speak
3 because I didn't have the words.

4 Today I am at a loss today as I am compelled to
5 speak on behalf of Zach Chaplin.

6 As a mother, I have empathy for the Torrence family.
7 Also, I have deep grief for Zach's mother, uncle and
8 daughters who will never see how great their dad was.

9 I think Drew's testimony and the story he created
10 exemplify his narcissistic and self-righteous character.
11 He could have chosen not to take the stand but instead he
12 made an oath on the Bible and lied.

13 On the night of the shooting, he provoked and bul-
14 lied everyone he could. Zach drew a line in the sand and
15 Drew crossed it.

16 Drew pushed and pushed, and Zach knocked him down,
17 and he then pushed some more by getting his gun and com-
18 ing back in to bully some more.

19 In my position under the pool table I was terrified
20 for Zach, lying there motionless on the floor, as well as
21 for my own life.

22 Drew did nothing to help him. His time in talking
23 with him was still only that of a bully.

24 I was helpless to go to Zach to help him, for fear
25 that Drew would shoot me too.

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1 Drew Torrence pushes every opportunity he is given
2 over the line. People like him only learn how to better
3 escape the law for the next crime.

4 Even after killing a man, he continued to spit in
5 the eye of the law.

6 I ask you to impose the maximum sentence on this
7 coward who has no respect for people, our inalienable
8 rights, or the officials who protect us.

9 Thank you.

10 THE COURT: Thank you, Ms. Muszynski.

11 Anything further, Solicitor?

12 SOLICITOR: No, Your Honor.

13 THE COURT: Thank you.

14 Mr. Floyd.

15 MR. FLOYD: Thank you, Your Honor. I certainly do
16 not want to rehash the facts of the case. Certainly you
17 have listened to the case, and you know the circumstances
18 of the shooting.

19 Mr. Torrence is before you for punishment. He does
20 not have much of a record before you, and until this in-
21 cident happened all he had was a trespassing offense on
22 his record.

23 He has lived with this every day. These people who
24 have spoken don't see him every day. They don't know what
25 it has done to him. I think it has changed his life

1 immensely also and that of his family. It has just been
2 terrible for everybody.

3 We ask Your Honor to consider a reasonable sentence
4 for him. The jury has spoken and we can't go against
5 what they have said.

6 I can't help but think though that with their re-
7 questing this charge of involuntary manslaughter that that
8 was where they wanted to go.

9 Drew was drinking and things happened that night and
10 morning that wouldn't ordinarily have happened otherwise.
11 He did what he did.

12 We would ask Your Honor to consider a reasonable sen-
13 tence. He has a lot of good, strong family support, and
14 he needs their support.

15 I think some of them would like to speak with you,
16 Judge, as well.

17 THE COURT: I'll be glad to hear from anyone as well
18 as from Mr. Torrence.

19 MR. FLOYD: Thank you.

20 THE COURT: If you would state your name, please.

21 MRS. TORRENCE: My name is Brenda Torrence, and I am
22 Drew's mother.

23 THE COURT: I will be glad to hear from you, Mrs.
24 Torrence.

25 MRS. TORRENCE: Much like Mrs. Chaplin, we struggled

1 to have a child ourselves, and after over ten years of
2 marriage we adopted Drew.

3 We adopted him as a newborn. He came home to us
4 when he was five days old. We have been his mother and
5 his father every day right up until this very second, and
6 we will continue to be until we breathe our last breath.

7 As most children are, you have times when you have
8 difficulties with them. You try to bring them up in the
9 way they should go and sometimes they depart from that,
10 and that can be said for both sides' children, Zach
11 Chaplin and Drew Torrence.

12 I can tell you that he made a very big error in his
13 selection of friends, the places he went, things he did.
14 I know that.

15 He is sorry for that and he has been. When we paid
16 the money to bond him out on December 3rd of 2008, I
17 spent hours watching him pace the floor all night long.

18 He didn't sleep. The next morning I would find him
19 sitting in his room on the side of his bed, and he would
20 burst into tears as I held him, and all he said was why.
21 Why, mom, why did he charge me?

22 Why, mom, why didn't he accept the medical help that
23 was available to him?

24 I don't have answers for that. I don't have answers
25 for any of this.

1 All I can tell you is that we love our son uncondi-
2 tionally. We could have stood up here and we could have
3 tried to introduce negative evidence, if you will, or
4 negative character information against many of the witnes-
5 ses, against the victim himself. We chose not to do that.
6 Drew asked us not to do that.

7 Have we been angry with the prosecution and the Soli-
8 citor's Office? Yes, we have.

9 Drew's response to me last night was, mom, calm down;
10 they're just doing their job.

11 Drew was a loving individual. I have seen him give
12 up his own money, money he didn't really have, because
13 he never has had a high-paying job -- giving it to people
14 who has needed it, needed help.

15 The Christmas Drew came home after being bonded out,
16 he spent Three Hundred Dollars on a family where the mom
17 didn't have a job and there was a three year old boy.

18 I have seen him have me take money to inmates who
19 needed it for wives or children because they didn't have
20 money.

21 I have made phone calls for people from the jail be-
22 cause they didn't have phone accounts. They couldn't
23 afford it, and this was all at Drew's request.

24 I understand the seriousness of this charge. I do.
25 We have lived through this agony and the death along with

1 Drew since the moment this happened.

2 You are going to be the one to sentence our son, and
3 I understand that, but I am asking you for mercy. He did
4 make a major mistake.

5 He said on the stand yesterday it was the worst mis-
6 take of his life. In a thousand years he never expected
7 to happen what happened.

8 We have prayed for God's mercy. I ask you for your
9 mercy as well for our son.

10 Thank you.

11 THE COURT: Thank you, Ms. Torrence.

12 State your name, please, sir.

13 MR. TORRENCE: Andrew Torrence, Senior.

14 THE COURT: I'll be glad to hear from you.

15 MR. TORRENCE: Your Honor, it has been over twenty-
16 seven years since I've had a drink, and I used to do that.
17 I've been in many places, and at any time anybody started
18 anything in that business usually I would try to stop it
19 before it exploded any further.

20 You know, this thing had to originate somewhere, and
21 if I come in here saying things to people you will have
22 me removed because you are running a business place, and
23 it is the law that somebody, if you serve him this much
24 alcohol and something happened, somebody should be re-
25 sponsible.

1 I know that's the way it used to be. Maybe it has
2 changed now.

3 You know, there were a lot of things that could have
4 been said by other people. I know my son took in a gun
5 and things happened, and I'm just thankful to the Lord
6 that nothing like that happened with me; that I had a sec-
7 ond chance.

8 I know my son goes over this in his mind every day,
9 and he will for the rest of his life. I know he's a grown
10 man, and he made a wrong decision. I don't agree with
11 what he did, but I don't think that he intended for any
12 of this to happen. He will spend the rest of his life
13 with this.

14 Everything is not right with this thing. I mean,
15 it's just not right.

16 If you came to me right now and found cocaine in my
17 pocket, what would you do to me? I mean, that's what I
18 am trying to say. Things are not right with this thing.

19 I see people all the time who make mistakes with al-
20 cohol, and I am asking you in behalf of my son to have
21 mercy on him and take in consideration that I will never
22 believe that Zach Chaplin wouldn't be here today if he
23 had cooperated with the doctors.

24 That's what I believe, and I am asking you to have
25 mercy on him, Judge.

1 Thank you very much.

2 THE COURT: Thank you, Mr. Torrence.

3 Tell me your name.

4 WITNESS: Micah Merchant. I am the pastor of the
5 Torrences' church that they go to.

6 I have known Drew since I was seventeen years old
7 but I wouldn't say I considered him a friend until the
8 last two years, in which he has found himself in this
9 trouble.

10 I have started meeting with him on a weekly basis on
11 Tuesday nights to try to help him make sense of everything
12 that's going on in his life.

13 Since that time, he and I have become friends. I
14 cannot speak necessarily to the decision he made on that
15 night. I haven't been here for the rest of the trial.

16 I do believe he acted in self-defense, and I believe,
17 as he has mentioned, that he made a terrible decision,
18 going into that bar with -- a terrible decision to go in
19 that bar, period, but I know Drew's heart now and I've
20 known it for two years.

21 He is a kind person to me. He is not malicious. He
22 is a caring person. He gives what he doesn't even have.
23 That's not a trait you learn. It's something that is
24 inside of you.

25 He has been a good friend to me, probably a better

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1 friend than I've been to him.

2 I would simply ask for your grace and mercy for
3 Drew. I spoke to him a little bit earlier about
4 the situation.

5 I don't have any expertise but the situation from
6 my perspective is like me looking at God and telling him
7 that he's culpable for my bad decisions. For this indi-
8 vidual to refuse medical treatment, Drew shouldn't be
9 punished for the decision he made.

10 But to the fullest extreme, I just don't see him
11 as being culpable as to that.

12 I would just ask for a little bit of grace and mercy,
13 a little bit of compassion, from Your Honor.

14 I also would like to say that I am sorry to the vic-
15 tim's family. Sorry for their loss and I hope that they
16 can grieve properly. I'm sorry for what happened to their
17 son.

18 Thank you.

19 THE COURT: Thank you. Thank you for being here,
20 Pastor.

21 WITNESS: Your Honor, I am (inaudible). I am Drew's
22 aunt.

23 I would just like to ask for the Court to have mercy
24 for Drew. I am not sure he has always made the right
25 decisions but I know he has a big heart.

1 I know he did not make a right decision by going in
2 there that night. I fully believe that he did go in to
3 just hang out, as he said earlier.

4 I have talked with Drew through the years, and I know
5 he is deeply a very good person. He has compassion for
6 people, Drew's family and Drew's friends.

7 I just ask that you have mercy on him.

8 Thank you.

9 THE COURT: Thank you.

10 (Other persons speaking in behalf of Mr.
11 Torrence)

12 MR. CHAVIS: Your Honor, my name is Butch Chavis. I
13 have known Drew since Drew was five years old.

14 Drew is a good person. Drew does have a big heart,
15 and he does things for other people.

16 Drew has made, as we know here from listening to
17 this trial -- we do know that Drew has made some decis-
18 ions that go against the grain of probably everybody in
19 here, a very bad decision.

20 The decision he made on that night in September was,
21 no doubt, the worst decision anyone could make or that he
22 will make in his life. That decision not only caused him
23 grief but caused his whole family grief and another family
24 grief.

25 What we need to understand here is that Drew was a

1 victim himself. Drew was somewhere he shouldn't have been,
2 but Drew had also been assaulted. Drew also had come
3 back to try to, in his opinion, arrest individ-
4 uals who had attacked him.

5 We all saw the video. We saw this. We saw that Drew
6 was attacked again.

7 Mrs. Chaplin went into how Drew could have left and
8 went on, but Mr. Chaplin could have went on too, but he
9 ran from the bar.

10 But he also to come back, and he also chose to throw
11 the barstool across the room to hit Drew and charged him.
12 That was his choice, not Drew's.

13 Drew was acting in a manner that I think any male
14 adult would act. Whether he was acting in self-defense
15 I can't say because I wasn't there that night.

16 One thing you need to take into account is that Drew
17 -- if Drew went in there to kill somebody, there would
18 have been more than one person dead because he did have
19 thirteen rounds in that gun.

20 But he did not -- after we saw the video and after
21 the shooting, Drew was not brandishing the weapon. He was
22 not threatening anybody. He was not a threat.

23 He did answer the phone. He did ask for help. The
24 things that Drew did is not something you would expect
25 if he had intended to murder him.

1 He is not the murderer that the Solicitor has tried
2 to make him out to be. He made a bad decision which is
3 something he will have to live with the rest of his life
4 as well.

5 Just like the others, I would ask that you take com-
6 passion and have mercy on Drew, and if you would, be the
7 one to grant Drew Torrence a second chance.

8 That's all we can ask of you, and we thank you for
9 your time. I certainly do thank you for the way you have
10 conducted this trial. I certainly appreciate that. It
11 is something I never have been involved with before, and
12 again I do thank you for the manner in which you have con-
13 ducted it.

14 I would ask that you extend some compassion and mercy,
15 if you would.

16 Thank you.

17 THE COURT: Thank you.

18 Anything you wish to say, Mr. Torrence?

19 DEFENDANT: Yes, Your Honor. I would tell everybody
20 that is the worst decision I've made in my life. I should
21 never have gone back into that bar. Never. I should
22 have never gone back in. I should have waited for the
23 police to come, but that did not happen.

24 I ask for your mercy. I ask for you to just give me
25 your mercy.

1 That's all I have to say. I know you are wonder-
2 ing what happened because you wasn't there, but I was
3 wrong for going back into the bar.

4 THE COURT: Thank you, Mr. Torrence.

5 Anything further, Mr. Floyd?

6 MR. FLOYD: Your Honor, Mr. Torrence didn't say any-
7 thing about this, but Mr. Torrence wrote a letter to Mrs.
8 Chaplin. He has instructed me not to give it to her un-
9 til after this trial was over because he didn't want her
10 to think he was sending her this letter to better his pos-
11 ition, get compassion from her.

12 But it is a very heart-felt letter in which he ex-
13 presses his remorse for what has happened and for her
14 loss of Zach.

15 I think it shows that he cares and that he is very
16 sorry for what happened, from the fact that he would not
17 let me give it to her until this was over. That gives
18 weight that it was very heart-felt, that he wanted me to
19 wait to give it to her.

20 He knows he made some very bad choices that night,
21 and I suggest that the video demonstrates that he did not
22 intend to go in there and kill anybody.

23 We ask that you take all of that into consideration,
24 Your Honor, and take into consideration the strong family
25 support and the people that care about him, which shows

1 he has some good qualities.

2 So we ask that you give a sentence that will allow
3 him at some point to resume his life and make his contri-
4 bution to the community.

5 Thank you.

6 THE COURT: Thank you. Thank you, Mr. Floyd.

7 THE COURT: Mr. Torrence, before I impose sentence,
8 I want to make a few statements concerning the sentence I
9 intend to impose.

10 I do take into account that it appears that you were
11 attacked. I don't think anybody here questions that from
12 the video and eye-witnesses who say that.

13 That was wrong, and there's no question about
14 that, and, of course, there is where the wrongs start
15 edging up in this case.

16 It hurts so many people that are left behind to
17 grieve their deceased, and that are going to be left be-
18 hind to grieve your going to the penitentiary.

19 Probably when you are not drinking, you have other
20 qualities that the pastor spoke about and others spoke
21 about and your mother and father spoke about as well;
22 that you are a good person; that you have a good heart.

23 It's kind of like a Jekyll and Hyde; that you are
24 not a good person when you drink.

25 It is not a good thing. It is not evidence of a

1 good heart. Not that you're not a good person or have
2 a good heart -- I don't mean it like that, but it is not
3 evidence of goodness when you call somebody a gay man;
4 hey, gay boy; hey, wolverine.. I'm not trying to label you.

5 You would know that that would invite a response and
6 that you would end up with a response, which is what you
7 received from Mr. Chaplin, and I do not condone that.

8 I am sure your father can tell you and many gentle-
9 men -- many men and women in this Courtroom -- I know my
10 daddy and granddaddy would tell me at most times when a
11 barroom fight had been over and done with -- no harm, no
12 foul, no police.

13 There is a suture or maybe not even a suture -- the-
14 butterfly or bandaid on the nose, or a bruised
15 knuckle, a bruised ego.

16 But you made those choices not to do that, and in
17 addition with that gun you had no right to go in -- to
18 go back in there.

19 I know that you know how wrong a decision that was.
20 I recall when you pled in front of me on the assault on
21 the corrections officer I thought you were genuinely re-
22 morseful for your actions toward Mr. Warren -- is that
23 right?

24 SOLICITOR: Tony Ward, Your Honor.

25 THE COURT: Mr. Ward -- I thought you were genuinely

1 remorseful and not just trying to help yourself out, to
2 get a lighter sentence.

3 I don't remember what I gave you. What did I give
4 you? Eighteen months?

5 MR. FLOYD: Three years, Your Honor.

6 THE COURT: That shows you I don't remember what I
7 gave you.

8 SOLICITOR: Three years suspended on eighteen months,
9 Your Honor.

10 THE COURT: Well, I thought eighteen months was in
11 there somewhere.

12 Now this lady here, Mrs. Chaplin, can only visit her
13 son in the cemetery, and here are your loving parents over
14 here who can only visit you in the penitentiary.

15 I don't know which one is worse. I think -- and I
16 understand your family and friends believe and maintain
17 that you were the victim and such as that. I understand
18 that, and I don't fault them for holding those beliefs at
19 all.

20 That is why we have a jury to determine the credibil-
21 ity and believability of the witnesses and to reach a ver-
22 dict, and they have no friends to reward and no enemies
23 to punish.

24 I asked my law clerk, and I wanted to ask that
25 pathologist -- do you ever think of the balance of life

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1 and death?

2 Mr. Chaplin's head was probably less than an eighth
3 of an inch away when that bullet entered in the fleshy
4 part of the shoulder. If it had been a little bit more,
5 you might not even have hit him. That second bullet.

6 DEFENDANT: Yes, sir, that's true.

7 THE COURT: There is nothing anyone in this Courtroom
8 can do now about that.

9 On 2010 GS 32 2318, State versus Andrew Torrence,
10 Junior, the jury having returned a verdict of guilty as to
11 voluntary manslaughter, the Defendant is committed to the
12 State Department of Corrections for a determinate term of
13 twenty-five years.

14 On 2011 GS 32 01440, the jury having convicted Mr.
15 Torrence of possession of a weapon during the commission
16 of a violent crime, the Defendant is committed to the
17 State Department of Corrections for a determinate term
18 of five years.

19 On 2011 GS 32 01441, the jury having convicted Mr.
20 Torrence of taking a weapon on premises where alcoholic
21 beverages are consumed on premises, the Defendant is com-
22 mitted to the State Department of Corrections for a de-
23 terminate term of five years.

24 Those are concurrent, with credit for all
25 time served by Mr. Torrence.

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1 Good luck to you, Mr. Torrence.

2 (Discussion by the Court with Sheriff as to the manner
3 for the individuals in the Courtroom to leave)

4 Thank you very much.

5 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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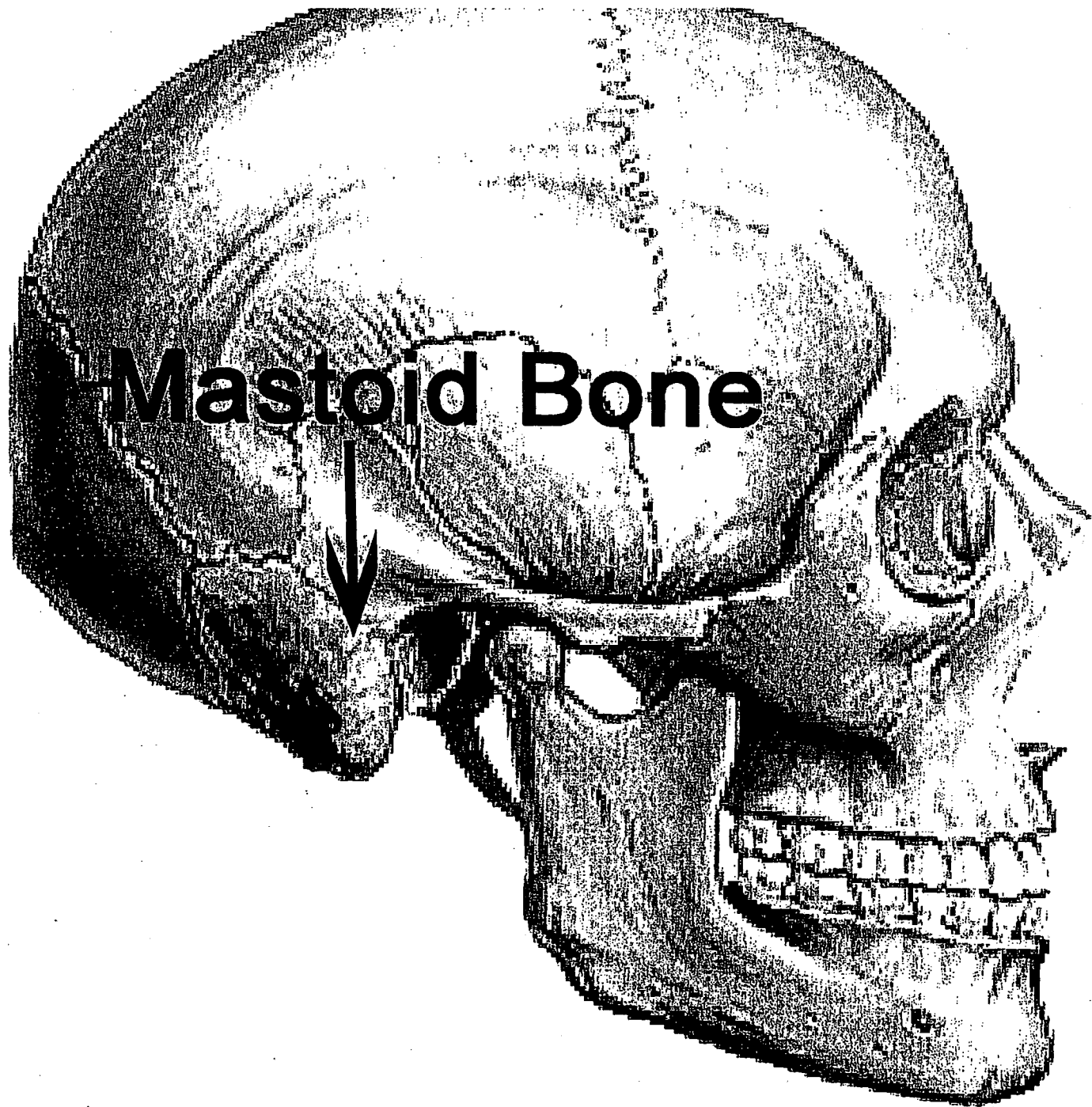
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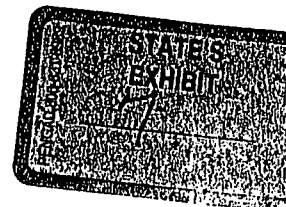
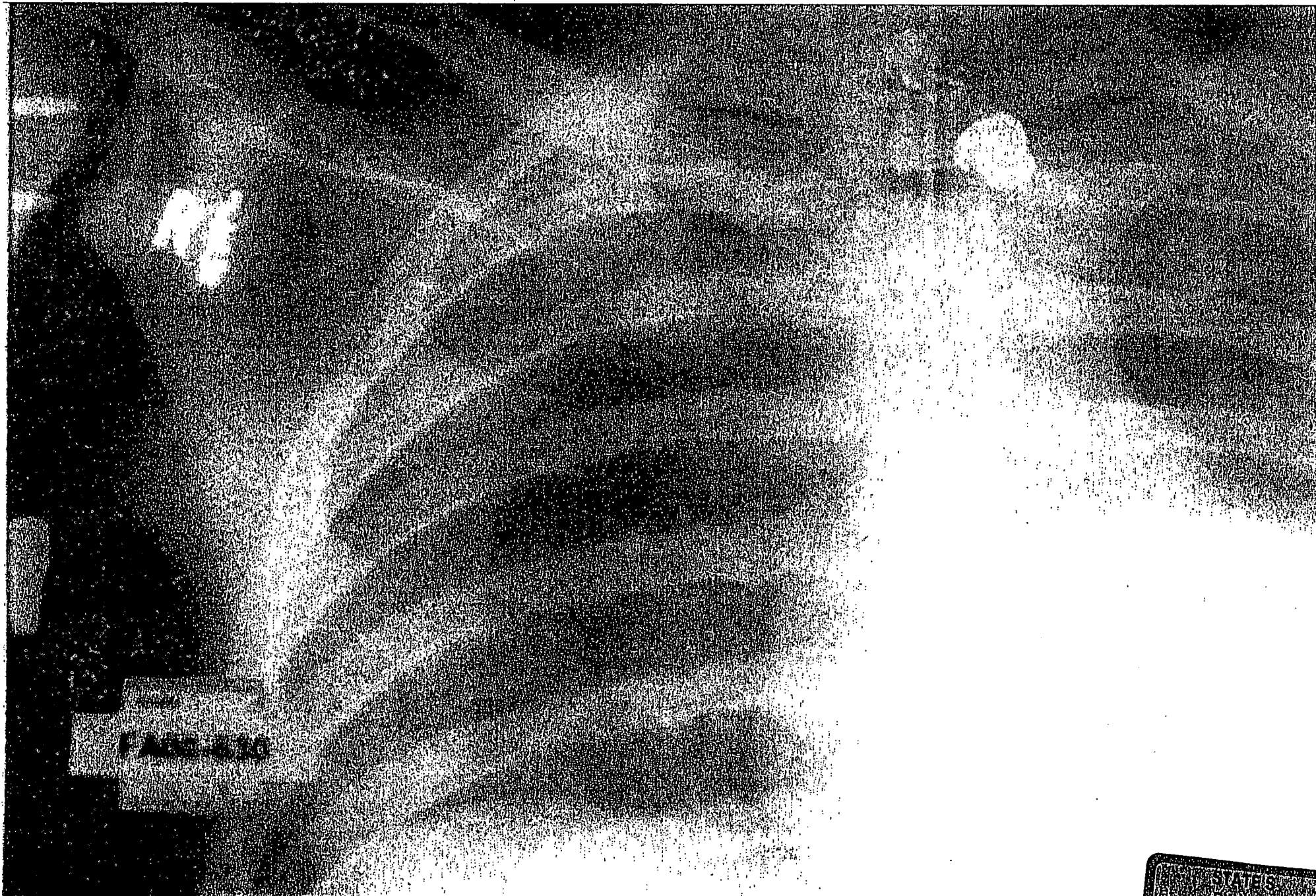
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Mastoid Bone



Donna Muszynski

Lee Buchanan

Drew Torrence

Jennifer Reynolds

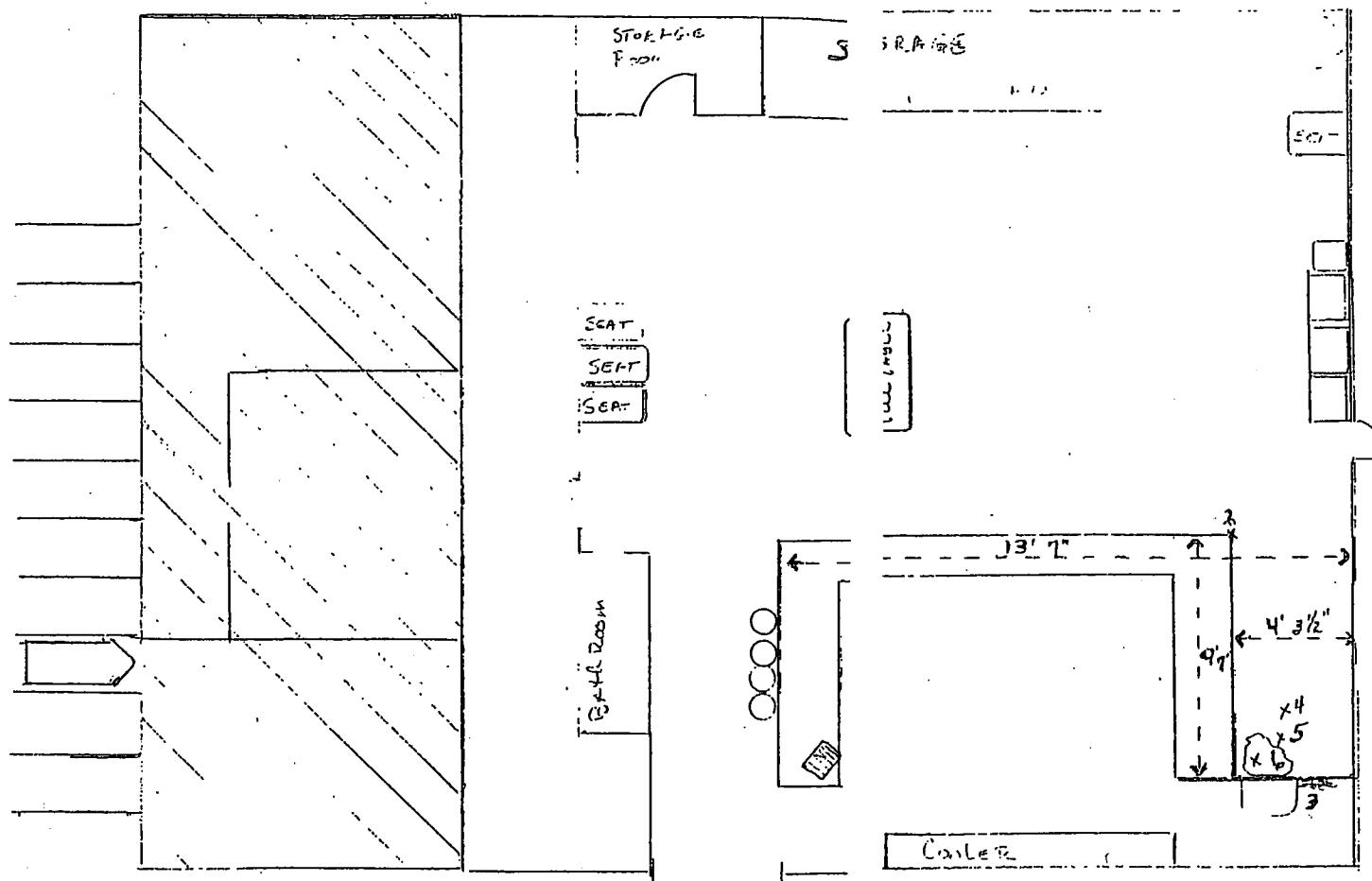
Lee Ann Stovall

Orlando Boyd

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STATES
EXHIBIT
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746 647 Sister Blue

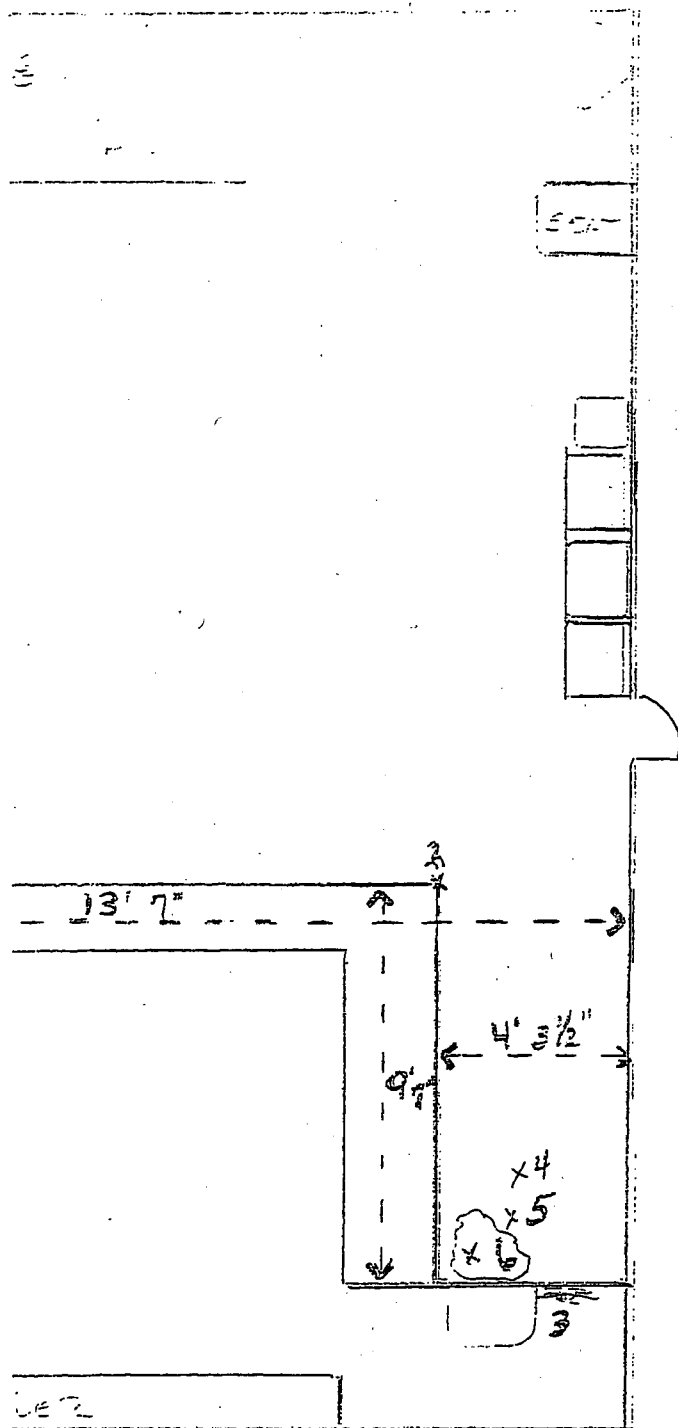


1. Hensley
2. Spent - 1000
3. Spent 1000
4. Gully Points
5. Spent
6. Food ex. 1000

17

Drawn By T. M. Charles & Partners
NOT DRAWN TO SCALE

1. Handing
2. Coat of Arms
3. Inset
4. Gray Paint
5. Chair
6. Floor in E. Room

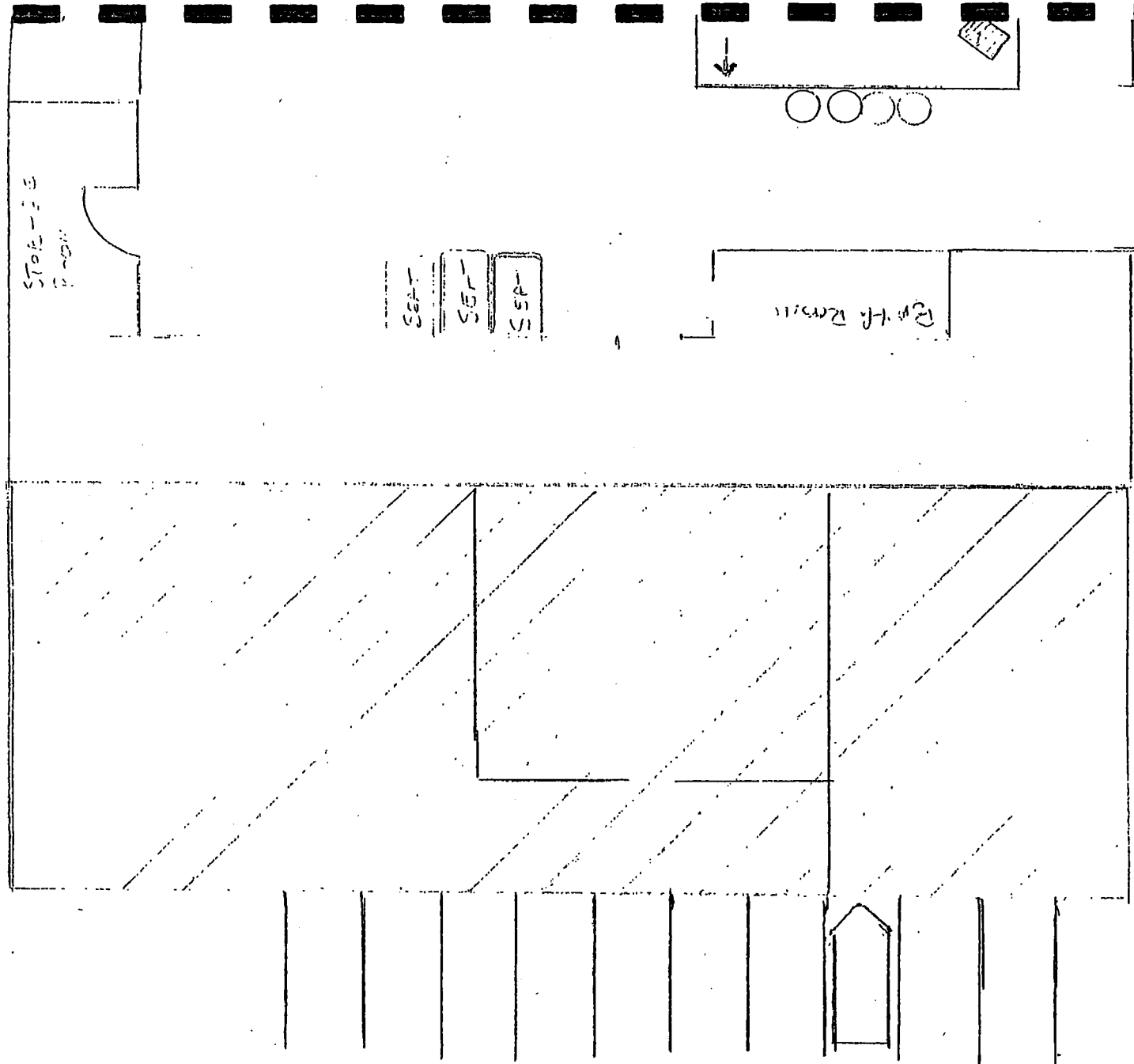


648

Drawn by Carl [unclear] [unclear]
NOT DRAWN TO SCALE

649

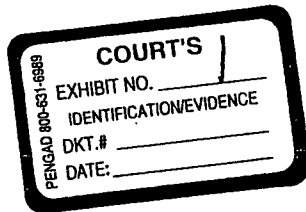
746 SUNSET Blvd



THE JURY REQUESTS COPIES OF THE
JUDGE CHARGES AND INSTRUCTIONS CORREL
OF THE LAWS THAT ARE RELEVANT
TO THIS CASE.

I will have it to you in
a few minutes, I need
to run a new copy that
does not include my notes.

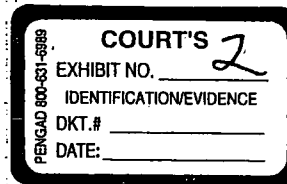
Mr. M. M.
Judge



IS THERE A POSSIBLE CHARGE OF
INVOLUNTARY MANSLAUGHTER?

No, Involuntary Manslaughter
is not an issue before
the jury.

Mr. M. M.
Judge
3 June 2011



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Knox R. McMahon, Circuit Court Judge

Case Nos. 2010-GS-32-2318, -1440, & -1444

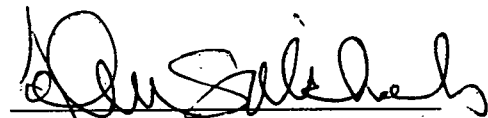
State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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